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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

J. CATHELL, INC.,)	
)	
PLAINTIFF,)	
)	
VS.)	
)	DOCKET NUMBER
HALEY ELIZABETH MARTIN,)	1:22-CV-5039-LMM
ET AL.,)	
DEFENDANTS.)	ATLANTA, GEORGIA
)	JANUARY 18, 2023
)	
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LEIGH MARTIN MAY,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	TALA AMIRFAZLI BURR & FORMAN, LLP ATLANTA, GEORGIA 30363
FOR THE DEFENDANT:	ANDREW CONNORS & ABIGAIL WHITE DARKHORSE ATTORNEYS LYNCHBURG, VIRGINIA 24502 TODD ECHOLS STOCKBRIDGE, GEORGIA 30281

*MECHANICAL STENOGRAPHY OF PROCEEDINGS
AND COMPUTER-AIDED TRANSCRIPT PRODUCED BY*

OFFICIAL COURT REPORTER:	MONTRELL VANN, RPR, RMR, RDR, CRR 2160 UNITED STATES COURTHOUSE 75 TED TURNER DRIVE, SOUTHWEST ATLANTA, GEORGIA 30303 (404)215-1549
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1 (IN ATLANTA, FULTON COUNTY, GEORGIA, JANUARY 18, 2023, IN
2 OPEN COURT.)

3 THE COURT: OKAY. GOOD MORNING. YOU MAY BE SEATED.

4 MR. CONNORS: GOOD MORNING.

5 THE COURT: WE ARE HERE IN CIVIL ACTION 22-CV-5339,
6 J. CATHELL, INC., VS. HALEY ELIZABETH MARTIN, ET AL.

7 AND STARTING WITH PLAINTIFF'S COUNSEL, IF COUNSEL WOULD
8 INTRODUCE THEMSELVES, PLEASE.

9 MS. AMIRFAZLI: GOOD MORNING, YOUR HONOR. MY NAME IS
10 TALA AMIRFAZLI, AND I'M HERE ON BEHALF OF PLAINTIFF.

11 THE COURT: OKAY. GOOD MORNING.

12 MR. CONNORS: GOOD MORNING, YOUR HONOR. I'M ANDREW
13 CONNORS, MY CO-COUNSEL ABBY WHITE HARRIS, AND TED ECHOLS OUR
14 LOCAL COUNSEL. WE'RE HERE ON BEHALF OF THE DEFENDANTS.

15 THE COURT: OKAY. GOOD MORNING TO YOU AS WELL.

16 MR. CONNORS: GOOD MORNING.

17 THE COURT: I HAVE HAD A CHANCE TO REVIEW ALL THE
18 INFORMATION THAT WAS PROVIDED, AND SO I'M PRETTY FAMILIAR WITH
19 THE INFORMATION IN THE RECORD. I TYPICALLY DO HAVE QUESTIONS,
20 SO I'LL PROBABLY BE ASKING YOU QUESTIONS AS WE GO THROUGH IT.
21 AND IN TERMS OF THE PLAINTIFFS' ARGUMENT, A LOT OF TIMES AT
22 THESE T.R.O. HEARINGS ATTORNEYS SPEND A LOT OF TIME ON THE
23 SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS, AND THE OTHER
24 FACTORS ARE A LITTLE BIT MORE CLEAR. I DON'T THINK THAT
25 THEY'RE NECESSARILY AS CLEAR IN THIS CASE, SO I JUST WANT TO

1 MAKE SURE THAT THE PLAINTIFF DOES TAKE TIME TO ADDRESS THOSE
2 ISSUES. SO I DID SET A TIME FOR THE ARGUMENTS. THE TIMERS ARE
3 ON THE WALL OVER THERE. AND WHEN THE PLAINTIFF SPEAKS, THE
4 TIMERS WILL START. AND IF YOU WANT TO SAVE ANY TIME FOR
5 REBUTTAL, IT WILL JUST BE THE TIME THAT'S LEFT ON THE CLOCK.
6 SO, WITH THAT, I'LL GO AHEAD AND HEAR FROM PLAINTIFF'S COUNSEL.

7 MS. AMIRFAZLI: THANK YOU, YOUR HONOR. AND I WILL BE
8 SAVING SOME TIME, SO I'LL KEEP A TRACK OF THE TIME I'M USING.
9 AND I HAVE A PRESENTATION TO KIND OF GOING ALONG WITH MY
10 ARGUMENT BECAUSE IT'S VERY VISUAL-HEAVY, AS I'M SURE YOU SAW.
11 BUT -- SO HOPEFULLY IT WILL HELP --

12 THE COURT: AND I DID HAVE A CHANCE TO LOOK AT ALL
13 THE VISUALS IN THE DOCUMENTS. IT'S PROBABLY A BETTER USE OF
14 YOUR TIME TO GET TO THE LEGAL ISSUES.

15 MS. AMIRFAZLI: SURE.

16 THE COURT: BECAUSE THAT'S ULTIMATELY WHAT'S GOING TO
17 BE MOST IMPORTANT TO ME.

18 MS. AMIRFAZLI: OKAY. IF I NEED TO SHOW ANYTHING, I
19 WILL -- IT WILL POP IT UP, BUT -- SO, LIKE I SAID MY NAME IS
20 TALA AMIRFAZLI, AND I'M HERE ON BEHALF OF PLAINTIFF, J.
21 CATHELL, INC. J. CATHELL, INC., AS I'M SURE YOU ARE AWARE, IS
22 A SOCIAL MEDIA, INFLUENCING, BLOGGING BUSINESS THAT PROVIDES
23 CERTAIN TIPS FOR FASHION, DESIGN, TRAVEL TO ITS CONSUMERS AND
24 ITS FOLLOWERS. JESSICA CATHELL, WHO IS SITTING BEHIND ME
25 TODAY, STARTED THE J. CATHELL BUSINESS AND BEGAN HER SOCIAL

1 MEDIA, INFLUENCING AND BLOGGING BUSINESS WHICH FIRST STARTED A
2 LITTLE BIT DIFFERENT THAN WHAT IT LOOKS LIKE TODAY. THERE WAS
3 A REBRANDING AROUND EARLY 2021 WHEN HER INITIAL BLOG WAS
4 HACKED. SO WHAT WE SEE TODAY IS A LITTLE BIT DIFFERENT THAN
5 WHAT SHE HAD INITIALLY STARTED, BUT IT IS WHAT SHE HAS SPENT A
6 LOT OF TIME AND MONEY CREATING AND MAKING SURE IS SUCCESSFUL.

7 SO AT AN EXTREMELY HIGH LEVEL, THE J. CATHELL BUSINESS
8 OPERATES ON VARIOUS PLATFORMS, BOTH INSTAGRAM, FACEBOOK,
9 PINTEREST, THE LIKE TO KNOW ACCOUNT, BUT THE FOCUS TODAY AND IN
10 THE BRIEFING HAS BEEN ON INSTAGRAM AND THE LINKING ABILITIES
11 THAT LIKE TO KNOW PROVIDES FOR THE ULTIMATE PURPOSE OF A BLOG,
12 WHICH IS TO -- ESSENTIALLY MAKE MONEY OFF OF WHAT IS BEING
13 PROMOTED AND THE ITEMS FEATURED IN THE CONTENT.

14 THE COURT: NOW, I'M A LITTLE -- WHEN I READ THROUGH
15 EVERYTHING, I WANT TO KNOW EXACTLY WHAT THE TRADE SECRETS ARE.

16 MS. AMIRFAZLI: SURE.

17 THE COURT: I'M A LITTLE CONFUSED ABOUT THAT BECAUSE
18 THERE'S THIS MEETING THAT HAPPENED WITH LIKE TO KNOW WHERE THEY
19 WERE PROVIDING GUIDANCE TO PLAINTIFF AS TO KIND OF HOW TO
20 OPTIMIZE THE WAY THAT THEY DID THE SITE. AND THERE'S A LOT OF
21 GENERAL TALK ABOUT TRADE SECRETS AND CONFIDENTIAL INFORMATION,
22 BUT I DON'T KNOW WHAT THAT IS, LIKE, WHAT CATEGORIES. AND SO
23 IS IT -- CERTAINLY IT'S NOT THE WAY IT LOOKS BECAUSE THAT IS --
24 EVERYONE CAN SEE THAT. SO TELL ME EXACTLY HOW YOU DEFINE THE
25 TRADE SECRETS.

1 MS. AMIRFAZLI: SURE. SO ONE -- SO ESSENTIALLY -- SO
2 THE TRADE SECRET IS, LIKE YOU SAID, IT'S NOT SO MUCH FOCUSED ON
3 THE LOOK OF HER PAGE. I MEAN, ANYONE CAN -- THESE ARE ALL
4 PUBLIC, SO ANYONE CAN GO LOG IN, SEE HOW SHE'S POSTING
5 SOMETHING, SEE HOW OTHERS ARE POSTING SOMETHING AND TRY TO
6 REPLICATE THE VISUAL COMPONENT OF A POST. SO THAT IS NOT
7 NECESSARILY WHAT WE'RE CLASSIFYING AS THE TRADE SECRET. WHAT
8 WE'RE CLASSIFYING A THE TRADE SECRET IS EVERYTHING ON THE BACK
9 END THAT US AS THE PUBLIC HAS NO INSIGHT INTO. SO WHILE I CAN
10 SEE WHAT J. CATHELL IS PROMOTING AND HOW -- WHAT OUTFITS SHE IS
11 CREATING ON WHAT SHE'S PUTTING TOGETHER VISUALLY, I DON'T KNOW,
12 YOU KNOW, WHY SHE IS PICKING CERTAIN THINGS, YOU KNOW, WHEN --
13 WHY SHE IS POSTING CERTAIN THINGS AT CERTAIN TIMES, WHAT THINGS
14 SHE IS COMBINING, WHAT THINGS SHE'S NOT COMBINING, WHAT THINGS
15 SHE IS NOT PROMOTING. YOU KNOW, THIS HAS BEEN OVER THE COURSE
16 OF HER -- SINCE HER REBRAND SHE HAS BEEN TESTING OUT A LOT OF
17 DIFFERENT -- YOU KNOW, THROUGH TRIAL AND ERROR, DIFFERENT
18 THINGS TO BASICALLY MAKE HER BUSINESS WHAT IT IS TODAY.

19 THE COURT: OKAY. WELL, LET'S BREAK THAT DOWN
20 BECAUSE I NEED A REALLY CLEARLY DEFINED TRADE SECRET. SO
21 OBVIOUSLY IT'S STUFF ON THE BACK END AND THE OUTFIT SHE PICKS.
22 I DON'T KNOW THAT THAT WOULD NECESSARILY BE A TRADE SECRET
23 BECAUSE THAT'S ONE THING YOU MENTIONED, BUT YOU SAID ONE OF
24 THEM IS THE TIMING OF WHEN THINGS ARE POSTED?

25 MS. AMIRFAZLI: YEAH.

1 THE COURT: OKAY. AND WHAT ELSE IS THE TRADE SECRET?

2 MS. AMIRFAZLI: AND THEN ALSO THE -- BASICALLY THE
3 COMBINATION OF EVERYTHING. SO IT'S NOT JUST THIS ONE SWEATER,
4 YOU KNOW, THE FACT THAT SHE'S POSTING THIS SWEATER ISN'T THE
5 TRADE SECRET. WE CAN ALL SEE WHAT SHE'S POSTING. IT'S THE
6 FACT THAT SHE HAS COMBINED A LOT OF DIFFERENT, YOU KNOW,
7 PARTNERSHIPS WITH RETAILERS, HER FORMULAS TO ESSENTIALLY CREATE
8 WHAT SHE IS CREATING. AND THE -- YOU KNOW, THE SPACING OF
9 EVERYTHING, WHEN SHE'S POSTING CERTAIN THINGS, WHETHER THEY ARE
10 POSTED ON HER STORY, ON HER HOME PAGE, YOU KNOW, THERE'S THE
11 SEQUENCE THAT SHE DOES, THERE'S THIS ESSENTIALLY --

12 THE COURT: CAN'T EVERYONE SEE THAT?

13 MS. AMIRFAZLI: YEAH.

14 THE COURT: LIKE, THE TIMING IS SOMETHING THAT
15 EVERYONE CAN SEE. THE SECRETS SEEM -- IS SOMETHING THAT ANYONE
16 CAN SEE. THE COMBINATION SHE'S USING.

17 MS. AMIRFAZLI: YEAH. SO THERE'S NO SECRET THAT THIS
18 WORLD, THIS SOCIAL MEDIA WORLD IS VERY LARGE AND BIG AND SO
19 MANY PEOPLE ARE TRYING TO GET INTO IT. NO ONE'S STOPPING
20 ANYONE FROM GOING ON TO ANYONE'S PAGE AND TRYING TO COPY, OH,
21 OKAY, I THINK SHE'S POSTING ON -- AT THIS TIME, SHE'S, YOU
22 KNOW, POSTING THESE OUTFITS, I'M GOING TO TRY AND REPLICATE IT.
23 BUT WITHOUT THE KNOWLEDGE OF THE BACK-END THINGS, WHICH IS
24 THE --

25 THE COURT: I DON'T KNOW WHAT IS, AND THAT'S --

1 MS. AMIRFAZLI: SURE.

2 THE COURT: BECAUSE EVERYTHING YOU'VE MENTIONED IS
3 SOMETHING THAT YOU COULD SEE IF YOU WERE JUST LOOKING AT IT.
4 SO WHAT IS THE BACK-END SECRET PART?

5 MS. AMIRFAZLI: YEAH, SO IT'S ESSENTIALLY WHY SHE
6 POSTS CERTAIN THINGS. SO IF I WANTED TO GO REPLICATE HER
7 INSTAGRAM ACCOUNT, I CAN SEE WHAT SHE'S DOING, BUT I DON'T KNOW
8 WHY SHE'S DOING ANYTHING. I CAN TRY AND REPLICATE IT, BUT
9 WITHOUT THE KNOWLEDGE OF THE -- HER FORMULAS AND HER STRATEGIES
10 AND HER PLANS, HER -- YOU KNOW, HER -- AGAIN, THIS BACK-END
11 STUFF. THERE'S NO WAY FOR ME TO CONTINUE REPLICATING ANYTHING
12 OR TO MAKE ANY SORT OF SUCCESSFUL REPLICA OF HER BUSINESS
13 BECAUSE I WON'T KNOW THIS INFORMATION THAT SHE HAS ON HER
14 END --

15 THE COURT: WHY IS THAT IMPORTANT? I GUESS THAT'S
16 WHAT I'M MISSING. SO LET'S SAY I WANTED TO COPY EVERYTHING
17 SHE'S DOING, SO I JUST WATCHED HER AND EVERY DAY I DID EXACTLY
18 WHAT SHE DID, AND I DIDN'T KNOW WHY, I JUST KNEW THAT I WAS
19 REPLICATING SOMEONE THAT IS SUCCESSFUL. WHY WOULDN'T I END UP
20 WITH THE SAME RESULT? I WOULDN'T CARE WHY. I COULD JUST LOOK
21 AT EVERYTHING SHE WAS DOING AND DO THE SAME THING. AND THAT'S
22 WHERE I DON'T SEE WHAT THE SECRET IS IN TERMS OF EVERYTHING'S
23 GOING TO BE SHOWN TO THE PUBLIC. WHY DOESN'T NECESSARILY
24 MATTER. ANYBODY COULD JUST DO EXACTLY WHAT SHE'S DOING.

25 MS. AMIRFAZLI: SO ONE THING TO POINT OUT IS THAT

1 THERE ARE A LOT OF COPYCAT ACCOUNTS OUT THERE THAT MS. CATHELL
2 RUNS ACROSS AND SEES, AND SHE'LL MONITOR THEM. BUT WITHOUT
3 THIS, LIKE, KNOWLEDGE THAT I'LL EXPLAIN IN A LITTLE BIT, THEY
4 DON'T GO ANYWHERE BECAUSE THE SUCCESS OF A BUSINESS, THIS TYPE
5 OF BUSINESS IS THE AMOUNT OF FOLLOWERS YOU HAVE AND THE
6 ENGAGEMENT THAT YOUR FOLLOWERS HAVE WITH YOUR POSTS AND
7 INTERACTING WITH THE CONTENT AND GOING THROUGH ALL OF THE LINKS
8 AND LINKING TO THE RETAILERS ULTIMATELY BUY THE PRODUCTS. I
9 CAN REPLICATE THIS ENTIRE MODEL, BUT WHAT I'M JUST VISUALLY
10 SEEING WITH THE POST. BUT WITHOUT, YOU KNOW, CAPTURING MY
11 FOLLOWERS AND THE TYPES OF FOLLOWERS THAT MS. CATHELL HAS
12 CAPTURE, MY ACCOUNT WOULDN'T GO ANYWHERE. IT WOULD MAYBE LOOK
13 THE SAME. IT WOULD LOOK LIKE THIS, BUT I WOULDN'T HAVE THE
14 FOLLOWERS, I WOULDN'T BE GENERATING THE INCOME, THE REVENUE,
15 THE COMMISSIONS, ANYTHING LIKE THAT. SO ONE OTHER KIND OF --
16 IN PART PUBLIC, BUT BASED IN NON-PUBLIC INFORMATION IS THE WAY
17 MS. CATHELL ADVERTISES HER POSTS AND PROMOTES HER POSTS. SO,
18 YOU KNOW, AS A INSTAGRAM USER, I CAN SEE IF CERTAIN -- SHE'S
19 RUNNING A CERTAIN AD, FOR EXAMPLE, LIKE, SOMETHING POP UP WHERE
20 I SEE THAT SHE'S SEEMINGLY PROMOTING A CERTAIN POST OR CONTENT
21 IN THE POST. BUT I DON'T KNOW AND I HAVE NO WAY OF KNOWING
22 WHAT SHE IS DOING BEFORE -- OR PUBLISHING THAT ADVERTISEMENT,
23 LIKE, THE CERTAIN, YOU KNOW, THINGS SHE'S CHECKING TO MAKE SURE
24 THAT THIS AD GOES TO THIS, YOU KNOW, GROUPING OF PEOPLE, WE'RE
25 GOING TO TARGET THE AD TO THIS. IT'S ESSENTIALLY THIS

1 MARKETING PLAN STRATEGY THAT LEADS TO HER DOING CERTAIN THINGS
2 THAT CREATE THIS PUBLIC POST, WHICH IS WHAT WE ULTIMATELY SEE.
3 SO WITHOUT THE KNOWLEDGE OF THAT, WITHOUT USING WHAT SHE IS
4 DOING, THERE'S REALLY NO EFFECTIVE WAY OF REPLICATING IT. I
5 CAN REPLICATE THE LOOK OF HER INSTAGRAM, BUT I WON'T BE ABLE TO
6 REPLICATE HER SUCCESS. NOW OF COURSE BY NO MEANS ARE WE
7 SUGGESTING THAT J. CATHELL IS AND SHOULD BE THE ONLY SOCIAL
8 MEDIA, INFLUENCING, BLOGGING BUSINESS THAT IS PROFITABLE.
9 THERE'S VERY MANY -- THERE'S MANY PROFITABLE BLOGS. THERE'S
10 ALSO MANY THAT FAIL BECAUSE THEY CAN'T GRASP THE PUBLIC OR THE
11 AUDIENCE THAT THEY'RE TRYING TO CAPTURE. AND IN FACT BEFORE
12 MS. CATHELL REBRANDED HER BUSINESS, SHE WAS RUNNING INTO THOSE
13 SORTS OF PROBLEMS THAT ALL STARTING BLOGGERS WILL FACE, WHICH
14 IS --

15 THE COURT: HOW DO YOU KNOW THAT THE DEFENDANT IS
16 ACTUALLY USING THE TRADE SECRETS? I DIDN'T SEE -- IT SOUNDS
17 LIKE WHAT YOU'RE SAYING IS THAT YOU CAN LOOK AT IT AND SEE THAT
18 SHE'S USING THE TRADE SECRETS BECAUSE IT LOOKS THE SAME, BUT
19 YET IT'S A SECRET, SO YOU CAN'T NECESSARILY KNOW THAT THERE ARE
20 TRADE SECRETS. AND SO THAT SEEMS TO BE VERY CIRCULAR, THAT
21 THIS IDEA THAT WE KNOW SHE'S USING THE TRADE SECRETS BECAUSE IT
22 LOOKS THE SAME, BUT YET THAT'S NOT ENOUGH.

23 MS. AMIRFAZLI: SO THERE'S A REASON MS. CATHELL HAS
24 NEVER FILED A LAWSUIT AGAINST ANY OTHER SEEMINGLY COPYCAT
25 INSTAGRAM ACCOUNT THAT SHE FINDS, THOUGH SHE COMES ACROSS THEM

1 ALL THE TIME. BUT THE DIFFERENCE HERE IS THAT MS. MARTIN
2 WORKED WITH -- WORKED AT J. CATHELL WHEN THE REBRAND WAS
3 HAPPENING AND WHEN MS. CATHELL WAS TESTING ALL OF HER IDEAS AND
4 HER STRATEGIES AND GOING THROUGH THIS TRIAL AND ERROR PROCESS
5 TO BASICALLY COME UP WITH HER NOW MARKETING BUSINESS PLAN.

6 THE COURT: AND I SEE THAT SHE HAS ACCESSES TO THEM.
7 CERTAINLY I SEE THAT IN YOUR THING, BUT USUALLY WHEN I HAVE A
8 T.R.O. HEARING, THERE'S SOME EVIDENCE THAT SPECIFICALLY SHOWS
9 THAT THEY KNOW THAT THEY ARE USING THE TRADE SECRET, NOT JUST
10 ACCESS. SO HOW DO WE KNOW THAT THE SECRET INFORMATION IS
11 ACTUALLY BEING UTILIZED AND SHE'S NOT JUST DOING A COPYCAT
12 WEBSITE WITHOUT DISCOVERY? BECAUSE I THINK DISCOVERY MIGHT
13 SHOW EXACTLY HOW SHE'S RUNNING THIS, BUT I DON'T THINK YOU
14 HAVE -- YOU'RE SAYING THAT ALL THIS STUFF ON THE BACK END THAT
15 YOU CAN'T SEE MAKES IT A TRADE SECRET. SO WITHOUT ACCESS TO
16 THE BACK-END INFORMATION, YOU KNOW SHE HAS ACCESS, BUT HOW DO
17 YOU HAVE PROOF THAT SHE'S USING IT?

18 MS. AMIRFAZLI: SO WHEN MS. CATHELL HIRED MS. MARTIN,
19 SHE WAS HIRED AS HER ASSISTANT TO BASICALLY -- I MEAN,
20 BASICALLY IT WAS MS. CATHELL AND MS. MARTIN, RIGHT, SO
21 MS. CATHELL WAS LEADING THE DRIVE OF WHAT SHE WANTED TO SEE IN
22 HER INSTAGRAM ACCOUNT, WHAT TYPE OF CONTENT SHE WANTED TO
23 RELEASE, WHAT SHE WANTED TO PROMOTE. SHE WAS DRIVING ALL OF
24 THIS STUFF, BUT IT WAS ALSO THEY WERE WORKING EVERY DAY
25 TOGETHER, SPEAKING ALL DAY MOST DAYS, YOU KNOW, DURING THE

1 BUSINESS HOURS AND THE BUSINESS DAYS. THEY WERE WORKING VERY
2 CLOSELY TOGETHER TO MAKE SURE THAT MS. MARTIN -- YOU KNOW, SHE
3 WAS RESPONSIBLE PRIMARILY FOR THE FIRST DRAFTS OF EVERYTHING.
4 SO WITHOUT, YOU KNOW -- J. CATHELL WOULD SPEAK ABOUT WHAT SHE
5 WANTED TO DO, THESE PLANS AND THESE STRATEGIES AND THESE
6 ADVERTISING GOALS THAT SHE WANTED TO ACCOMPLISH AND SHE WOULD
7 TELL MS. MARTIN HOW THEY WERE GOING TO BE ACCOMPLISHED WITH ALL
8 OF THE -- WHAT MS. CATHELL HAD OVER THE YEARS LEARNED AND
9 ACQUIRED THROUGH RUNNING HER BUSINESS. AND MS. MARTIN
10 IMPLEMENTED THOSE IN THE FIRST DRAFTS OF EVERYTHING, WHETHER,
11 LIKE, THE VISUALS OF WHAT WE SEE, THE CONTENT, OR IF IT WAS THE
12 SOMETHING LIKE THE -- LIKE AN ADVERTISING. SO IF SHE WAS GOING
13 TO BE UNLOADING SOMETHING INTO ADVERTISING, MS. CATHELL WOULD
14 TELL HER, OKAY, WE NEED TO, YOU KNOW, DO THIS, THIS AND THIS,
15 CHECK THESE BOXES TO MAKE SURE THAT IT GOES TO WHERE I WANT IT
16 TO GO, IT'S PROMOTING THE THING THAT I WANT IT TO PROMOTE. AND
17 SO MS. CATHELL WAS BASICALLY ON A DAILY BASIS TELLING
18 MS. MARTIN WHAT TO DO.

19 THE COURT: BUT ISN'T THERE A QUESTION OF FACT ON
20 THAT? BECAUSE WHEN I READ THE TWO AFFIDAVITS, THEY SEEM TO
21 PRESENT A VERY DIFFERENT STORY ABOUT HOW THIS ALL WORKED. AND
22 ULTIMATELY SOMEBODY'S RIGHT AND SOMEBODY'S WRONG.

23 MS. AMIRFAZLI: OF COURSE.

24 THE COURT: BUT IT APPEARS THAT THERE'S A QUESTION OF
25 FACT ON WHO WAS REALLY LEADING THIS TRAIN, SO TO SPEAK, WHO HAD

1 THE EXPERIENCE.

2 MS. AMIRFAZLI: SO IN OUR REPLY -- SO OF COURSE THE
3 DECLARATIONS ARE COMPETING. I REALIZED THAT. AND THE
4 STATEMENTS OF KIND OF EVERYONE'S ROLE AND EXPERIENCE PRIOR TO
5 IS STATED DIFFERENTLY, BUT WHEN MS. CATHELL HIRED MS. MARTIN,
6 WE PROVIDED A SCREENSHOT OF AN E-MAIL WHEN MS. MARTIN WAS
7 APPLYING ESSENTIALLY FOR THIS POSITION OR INQUIRING FOR THE
8 POSITION. MS. CATHELL'S UNDERSTANDING WAS THAT MS. MARTIN
9 DIDN'T HAVE ANY EXPERIENCE WORKING WITH ANY OTHER SOCIAL MEDIA
10 BLOGGER OR INFLUENCER. SO SHE HAD SOME EXPERIENCE WITH A
11 JEWELRY LINE THAT SHE HAD STARTED AND WORKING WITH HER FAMILY'S
12 FOUNDATION, BUT SHE HAD NO OTHER EXPERIENCE THAT WOULD
13 OTHERWISE BE NECESSARY FOR DRIVING THE J. CATHELL BUSINESS.
14 BUT OF COURSE BECAUSE OF HER OTHER EXPERIENCE THAT SHE HAD WITH
15 CERTAIN PROGRAMS AND HER WILLINGNESS TO WANT TO WORK AND HER
16 EXCITEMENT TO WORKING, MS. CATHELL ESSENTIALLY MOLDED
17 MS. MARTIN INTO DEVELOPING THE STYLE THAT MS. CATHELL WANTED TO
18 PROMOTE. SO THAT'S SHOWN IN SOME OF THE E-MAILS WHERE
19 MS. CATHELL WOULD REVIEW ALL OF THE DRAFTS AND MAKE CERTAIN
20 CHANGES AND TWEAKS AND REALLY TO MAKE SURE THAT IT WASN'T
21 HALEY'S VISION THAT WAS BEING PROMOTED THROUGH THE BLOG. IT
22 WAS ACTUALLY MS. CATHELL, BUT, YOU KNOW, WITH THE WORK DONE BY
23 MS. MARTIN. AND THERE ARE SOME COMPETING STATEMENTS ABOUT THE
24 AMOUNT OF TIME THEY SPENT TOGETHER OR SPOKE ON THE PHONE OR HAD
25 MEETINGS, BUT, YOU KNOW, ASIDE FROM WHAT IS SAID, THE EVIDENCE

1 THAT WE SUBMIT WITH OUR SUPPLEMENTAL DECLARATION SHOWS THAT IT
2 WAS MUCH MORE THAN WHAT MS. MARTIN IS TRYING TO PORTRAY. THEY
3 SPOKE FOR MORE THAN JUST MINUTES A DAY. YOU KNOW, THEY HAD
4 REGULAR MORNING MEETINGS. THEY SPOKE ABOUT THE PLAN FOR THE
5 DAY, THE GOALS FOR THAT WEEK, THE PLANS FOR THAT WEEK. THEY --
6 YOU KNOW, I PROVIDED A EXEMPLARY CALL LOG WHERE IN THE COURSE
7 OF 21 BUSINESS DAYS THEY SPOKE 20 BUSINESS DAYS ON THE PHONE
8 FOR AN AVERAGE OF ABOUT 47 MINUTES PER DAY. SO THAT'S
9 SIGNIFICANTLY MORE THAN A FEW MINUTES HERE AND THERE. NOW,
10 THAT DOESN'T ALSO CAPTURE THE EXTENSIVE TEXT MESSAGE
11 COMMUNICATIONS DAILY AND CONSTANTLY BETWEEN THE TWO. THESE TWO
12 WERE WORKING VERY CLOSELY TOGETHER WITH MS. MARTIN MAKING SURE
13 THAT WHAT SHE WANTED WAS BEING ACTUALLY IMPLEMENTED AND DONE.
14 SO THERE'S NO DOUBT IN OUR MIND THAT WHAT MS. MARTIN LEARNED
15 THROUGH WORKING WITH J. CATHELL, SHE HAS USED TO CREATE HER
16 ACCOUNT.

17 NOW, IN GEORGIA, OF COURSE, THERE'S NO -- THERE'S NOTHING
18 PREVENTING ANYONE STARTING A COMPETING BUSINESS. WHAT WE DO
19 KNOW HERE IS THAT THE WEAR TO WANDER ACCOUNT WAS STARTED AS
20 EARLY OR AS LATE AS -- I BELIEVE IT WAS FEBRUARY OF 2022, AND
21 THAT WAS STILL WHEN SHE WAS WORKING FOR MS. CATHELL. SO HER
22 EMPLOYMENT WITH J. CATHELL DIDN'T TERMINATE UNTIL SEPTEMBER OF
23 '22, AND THAT WAS AFTER MS. CATHELL LOGGED ONTO THE GEORGIA
24 SECRETARY OF STATE WEBSITE NOTICING THAT THE WEAR TO WANDER
25 ACCOUNT WAS ACTUALLY BEING RUN BY MS. MARTIN.

1 NOW, ONE OF THE THINGS THAT I THINK IS HELPFUL TO SHED
2 LIGHT ON THIS IS, LIKE I MENTIONED, THERE'S A LOT OF COPYCAT
3 ACCOUNTS OUT THERE THAT MS. CATHELL WOULD COME ACROSS OR
4 MS. CATHELL WOULD COME ACROSS WHILE WORKING FOR J. CATHELL.
5 THAT'S NOT THE CONCERN. MS. CATHELL KNEW THAT THESE
6 COMPETITORS DIDN'T HAVE HER INFORMATION. THEY HAD IN NO WAY OF
7 ACCESSING THAT INFORMATION. THEY HAD NEVER WORKED WITH
8 MS. CATHELL OR FOR J. CATHELL, SO THEY -- YOU KNOW, WHATEVER
9 THEY WERE DOING, WHILE IT MIGHT VISUALLY LOOK THE SAME, WAS
10 GOING TO BE DIFFERENT THAN WHAT MS. CATHELL WAS DOING.

11 THE COURT: WELL, I THINK THAT'S WHAT'S GIVING YOU A
12 PROBLEM BECAUSE YOU CAN HAVE A COPYCAT ACCOUNT THAT LOOKS
13 SIMILAR AND DOING SIMILAR THINGS AND NOT USING TRADE SECRETS.
14 AND EVERYTHING THAT -- EVEN ACCEPTING YOUR VERSION AS TRUE, IS
15 THAT SHE WAS TRAINING AND LEARNING AND USING THIS LIKE TO KNOW
16 PLATFORM. AND SO YOU'RE SAYING KIND OF THAT SHE HAD TO HAVE
17 USED THE TRADE SECRET IS BECAUSE SHE DIDN'T HAVE THIS
18 INFORMATION WHEN SHE STARTED WORKING HERE, BUT THERE SEEMS TO
19 BE AN ALTERNATIVE VERSION OF IT WHICH COULD BE THAT SHE -- EVEN
20 IF YOU ACCEPT KIND OF WHAT YOU SAY IS TRUE, THAT SHE LEARNED
21 HOW TO DO THIS WHEN SHE WAS WORKING THERE, AND THAT IT'S NOT
22 NECESSARY FOR HER TO USE THE CONFIDENTIAL SECRET STUFF, WHICH
23 I'M STILL NOT QUITE SURE WHAT THAT IS, BUT THAT SHE DIDN'T
24 NECESSARILY HAVE TO USE THAT TO HAVE A COPYCAT. AND SO IT'S
25 YOUR BURDEN TO PROVE THAT HER SITE ACTUALLY USES THE

1 CONFIDENTIAL INFORMATION AND DOESN'T ACTUALLY JUST UTILIZED
2 WHAT SHE LEARNED THAT IS, LIKE, KNOWLEDGE IN THE INDUSTRY.

3 MS. AMIRFAZLI: SO ONE STORY THAT MIGHT KIND OF HELP
4 CLARIFY THIS IS MS. CATHELL IS APPROACHED PRETTY REGULARLY BY
5 VARIOUS FOLKS IN THE INDUSTRY, WHETHER IT BE ON THE LIKE TO
6 KNOW SIDE OR OTHER BLOGGERS, WHERE THEY'RE ASKING -- THEY'RE
7 ESSENTIALLY -- EVERYONE'S SURPRISED BY HOW SUCCESSFUL HER
8 BUSINESS IS GIVEN THE AMOUNT OF TIME IT'S EXISTED, THE
9 NUMBER -- YOU KNOW, THE PROPORTION OF HER KIND OF PROFITS TO
10 HER, THE NUMBER OF FOLLOWERS BECAUSE YOU CAN HAVE --

11 THE COURT: HOW DO PEOPLE KNOW WHAT HER PROFITS ARE?

12 MS. AMIRFAZLI: WELL --

13 THE COURT: BECAUSE I THOUGHT THAT WAS SOMETHING THAT
14 WAS SECRET.

15 MS. AMIRFAZLI: SO YOU'RE RIGHT, IT IS.

16 THE COURT: OKAY.

17 MS. AMIRFAZLI: NOW, MS. MARTIN KNEW BECAUSE SHE WAS
18 WORKING FOR HER.

19 THE COURT: RIGHT. BUT I JUST -- ALL THESE PEOPLE
20 THAT KNEW HER PROFITS.

21 MS. AMIRFAZLI: SO ON THE LIKE TO KNOW SIDE, WHICH
22 THEY ARE RESPONSIBLE FOR THE LINKING TO THE RETAILERS, THEY
23 HAVE SOME INSIGHT TO WHAT BLOGS ARE DOING WELL, LIKE, WHAT
24 THEY'RE GENERALLY GENERATING AND BEING ABLE TO COMPARE THE
25 DOLLAR AMOUNTS THAT THEY'RE GENERATING TO THE NUMBER OF

1 FOLLOWERS THEY HAVE. YOU KNOW, WE TALK ABOUT FOLLOWERS AS THE
2 KIND OF BENCHMARK OF A SUCCESS OF A COMPANY -- OR THIS TYPE OF
3 A COMPANY, BUT IT IS, BUT IT'S -- BUT IT ALSO ISN'T. SO YOU
4 CAN HAVE THOUSANDS AND THOUSANDS OF FOLLOWERS THAT ARE
5 ESSENTIALLY ON (VERBATIM) ACTIVE INSTAGRAM USERS OR LIKE, BOSS,
6 THEY'RE NOT GOING TO BE BUYING ANYTHING. SO IT DOESN'T MATTER
7 IF YOU HAVE TWO MILLION FOLLOWERS IF YOUR TWO MILLION FOLLOWERS
8 AREN'T CLICKING THROUGH ANYTHING. YOU CAN HAVE A THOUSAND
9 FOLLOWERS, AND IF YOUR THOUSAND FOLLOWERS --

10 THE COURT: LET'S MOVE TO IRREPARABLE INJURY. SO I
11 HAVE SOME CONCERNS ABOUT THAT FACTOR. IT'S BRIEFED JUST AS
12 THERE'S GOING TO BE IRREPARABLE INJURY BECAUSE THERE IS
13 CONFIDENTIAL INFORMATION USED, BUT THAT SEEMS A LITTLE
14 CONCLUSORY TO ME IN TERMS OF MY UNDERSTANDING ABOUT HOW THIS
15 KIND OF WORLD WORKS. AND SO YOU'VE GOT THE COPYCATS AND THEN
16 YOU HAVE THIS ACCOUNT, AND CERTAINLY PEOPLE SUBSCRIBE TO ONE OR
17 MORE OF THESE. PEOPLE AREN'T JUST GOING TO NECESSARILY PICK
18 ONE. THEY HAVE A LOT OF THEM, SO HOW DO WE KNOW THAT THERE IS
19 THIS IRREPARABLE INJURY IN TERMS OF THIS LOSS OF FOLLOWERS AND
20 ALSO THAT IT'S NOT SOMETHING THAT CAN BE REPAIRED BY MONEY?
21 BECAUSE IF IT'S REPAIRED BY MONEY, THEN IT'S NOT IRREPARABLE.

22 MS. AMIRFAZLI: SO THE AMOUNT OF FOLLOWERS IS
23 IMPORTANT, OF COURSE. THIS TYPE OF BUSINESS WANTS TO RETAIN
24 ITS FOLLOWERS AND GROW ITS FOLLOWERS LIST, BUT THE DAMAGE COMES
25 FROM WHAT THOSE FOLLOWERS ARE DOING AND WHAT THEY'RE BASICALLY

1 CLICKING THROUGH. SO WHILE ONE PERSON CAN FOLLOW MULTIPLE
2 ACCOUNTS, IF ONE PERSON WANTS TO PURCHASE ONE SPECIFIC ITEM,
3 YOU CAN ONLY PURCHASE THE ITEM THROUGH ONE LINK. SO YOU'RE
4 EITHER GOING TO BE LINKING THROUGH THE J. CATHELL INSTAGRAM AND
5 LIKE TO KNOW PAGES, OR YOU'RE GOING TO BE LINKING THROUGH
6 SOMEWHERE ELSE. SO WITH THESE COMPETING, YOU KNOW, VISUALLY
7 SIMILAR INSTAGRAMS COMBINED WITH, YOU KNOW, WHAT MS. MARTIN HAS
8 DONE ON THE BACK END TO BASICALLY GET THE -- GET WEAR TO WANDER
9 TO, YOU KNOW, IN THE SAME KIND OF PATH AS J. CATHELL, THAT'S
10 WHERE IT'S LEADING TO DAMAGE TO MY CLIENT. YOU KNOW, SHE'S --
11 THERE IS OF COURSE OTHER BLOGS OUT THERE THAT ALL KIND OF
12 OVERLAP IN THE SAME INDUSTRY AND SAME -- SIMILAR TARGET
13 AUDIENCES OR WHAT THEY'RE PROMOTING, BUT THE DIFFERENCE BETWEEN
14 THE OTHER COMPETITORS AND MS. MARTIN'S COMPANY IS THAT THE
15 OTHER COMPETITORS DIDN'T WORK WITH MS. CATHELL. AND I THINK --

16 THE COURT: BUT WHY WOULDN'T MONEY SOLVE THIS? I
17 COULD SEE A SCENARIO WHERE EVERYTHING YOU SAID IS RIGHT AND YOU
18 WIN AT TRIAL AND YOU GET EVERY DOLLAR THAT DEFENDANT HAS MADE
19 THROUGH THE SITE THAT GOES TO YOUR CLIENT. WHY WOULD THAT NOT
20 FIX THE PROBLEM BECAUSE THERE'S NO EVIDENCE SHE'S SHARING THIS
21 CONFIDENTIAL INFORMATION TO ANYONE ELSE? TYPICALLY WHEN I HAVE
22 A TRADE SECRETS ISSUE, THE IRREPARABLE INJURY IS THAT SOMEBODY
23 ELSE IS GETTING SOMEBODY -- SOMEBODY NEW IS GETTING ACCESS TO
24 THE CONFIDENTIAL INFORMATION. AND SO IT SEEMS LIKE IF YOU JUST
25 GAVE THE MONEY BACK, THAT THAT WOULD SOLVE THE PROBLEM.

1 MS. AMIRFAZLI: SO I THINK IF THE AMOUNT OF THE MONEY
2 WAS EASY TO IDENTIFY, THAT MIGHT BE, YOU KNOW, THE EASIER THING
3 TO DO. BUT HERE THERE'S REALLY NO WAY FOR US TO KNOW WHAT
4 BASICALLY CLICKS AND FOLLOWERS SHE HAS LOST BECAUSE OF THIS.
5 SO THERE'S REALLY NO WAY FOR US TO CALCULATE, OH, IF THIS
6 ACCOUNT, YOU KNOW, DIDN'T USE THOSE SAME FORMULAS AND TOOLS
7 THAT MS. CATHELL IS USING, THAT, YOU KNOW, THIS GROUP OF PEOPLE
8 OR THESE CERTAIN ITEMS WOULD HAVE BEEN SOLD. SO ALL WE KNOW
9 RIGHT NOW IS THAT, YOU KNOW, SHE LEFT HER EMPLOYMENT, SHE
10 STARTED HER COMPANY WHILE SHE WAS EMPLOYED WITH MS. CATHELL AND
11 ESSENTIALLY CREATED THIS COMPETING BUSINESS THAT BECAUSE OF
12 HER -- OUR UNDERSTANDING WAS THAT SHE DIDN'T HAVE ANY OTHER
13 EXPERIENCE IN THIS TYPE OF INDUSTRY, IN THIS WORLD, IN THIS
14 SPECIFIC TYPE OF BLOGGING AND INFLUENCING INDUSTRY BEFORE
15 WORKING WITH MS. CATHELL. SO MS. CATHELL ESSENTIALLY MOLDED
16 HER TO WHAT SHE IS TODAY. AND MS. MARTIN DURING HER EMPLOYMENT
17 WITH MS. CATHELL WAS ESSENTIALLY CREATING HER CONTENT
18 SIMULTANEOUSLY WITH CREATING THE DRAFTS OF THE CONTENT FOR J.
19 CATHELL USING THE SAME KIND OF TOOLS AND THINGS THAT
20 MS. CATHELL WAS IMPLEMENTING.

21 ONE EXAMPLE OF THAT IS, UNLIKE SOME COPYCAT ACCOUNTS, YOU
22 KNOW VISUALLY, AGAIN, THEY'RE ALL OUT THERE, BUT MS. CATHELL ON
23 A DAILY AND WEEKLY BASIS HAS CERTAIN IDEAS THAT SHE WANTS TO
24 TEST OR SHE -- LET'S DO THIS INSTEAD OF THIS, THIS WEEK, YOU
25 KNOW. AGAIN, THIS HAS BEEN PART OF HER TRIAL AND ERROR PROCESS

1 AND BASICALLY FINALIZING, LIKE, HOW HER BUSINESS IS RUN TODAY.
2 AND CERTAIN THINGS THAT THEY WERE IMPLEMENTING, MS. CATHELL
3 WOULD LOOK AT THE WEAR TO WANDER ACCOUNT -- NOW THIS IS BEFORE
4 SHE KNEW MS. MARTIN WAS RUNNING IT, AND THEY WERE IMPLEMENTING
5 THE SAME THINGS. SO IT WAS ALL VERY UNLIKE OTHER COPYCAT
6 ACCOUNTS. OTHER COPYCAT ACCOUNTS CAN'T KNOW YOUR -- YOU KNOW,
7 CERTAIN STRATEGIES YOU'RE TRYING TO IMPLEMENT. THEY WILL KNOW
8 THE VISUAL OF WHAT IS THE RESULT OF THAT, BUT THEY WON'T KNOW
9 THE BACK END OF EVERYTHING BECAUSE THERE'S NO WAY TO VIEW THAT.

10 ONE OTHER THING I WANTED TO POINT OUT THAT MS. MARTIN SAYS
11 IN HER DECLARATION WHERE WE EXPLAIN THAT IN OUR SUPPLEMENTAL
12 DECLARATION, IS I DON'T WANT THERE TO BE A MISUNDERSTANDING OF
13 HOW MS. CATHELL DEVELOPED HER BRAND. SO IT WAS NOT THROUGH THE
14 CONVERSATIONS WITH LIKE TO KNOW REPRESENTATIVES. THEY DID HAVE
15 CALLS WITH THOSE REPRESENTATIVES, AND THERE'S A CALL REFERENCE
16 IN MS. MARTIN'S DECLARATION WHERE THEY'RE DISCUSSING SORT OF
17 THE LOOK OF THE LAYERING OF THE OUTFITS. NOW, THE ISSUE IN
18 THAT CALL WAS ACTUALLY THE CALL WAS (VERBATIM) INITIATED BY
19 MS. CATHELL BECAUSE THERE WAS A TECHNICAL GLITCH WITH CERTAIN
20 CONTENT BEING ATTRIBUTED TO MS. CATHELL THAT OTHER BLOGGERS
21 MIGHT ALSO BE FEATURING IN THEIR CONTENT. SO, FOR EXAMPLE, SHE
22 WOULD GET NOTIFIED IF SOMEONE, YOU KNOW, CLICKED THROUGH, LIKE,
23 A PAIR OF SUNGLASSES ON ANOTHER ACCOUNT THAT LOOKED SIMILAR TO
24 WHAT MS. CATHELL HAD ON HER POST, AND THEN MS. CATHELL WOULD
25 GET NOTIFIED OF THAT ACTIVITY. SO SHE RAISED THAT WITH LIKE TO

1 KNOW, AND THEY ADDRESSED THAT TECHNICAL GLITCH. IT WAS NOT A
2 CALL TO DISCUSS HOW SHE DEVELOPED HER BUSINESS OR SOME, YOU
3 KNOW, IDEAS FOR HER TO IMPLEMENT. MS. CATHELL HAS BEEN
4 IMPLEMENTING HER LOOK AND PLAN ALL SINCE HER REBRAND.

5 THE OTHER KIND OF IMPORTANT THING TO NOTE HERE IS THAT
6 MS. MARTIN KNEW -- YOU KNOW, DURING THE COURSE OF HER
7 EMPLOYMENT THERE WERE MANY PEOPLE, LIKE I SAID, THAT WOULD
8 APPROACH MS. CATHELL TO ASK KIND OF WHAT HER SECRETS ARE, LIKE,
9 YOU KNOW, YOU'RE GAINING CERTAIN AMOUNT OF FOLLOWERS, YOU KNOW,
10 DAY AFTER DAY OR WEEK AFTER WEEK. AND, YOU KNOW, AGAIN, ON THE
11 LIKE TO KNOW SIDE THEY WERE SEEING HOW SUCCESSFUL SHE WAS. AND
12 IT WAS, FROM WHAT THEY WERE TELLING HER, UNLIKE ANYTHING LIKE
13 THAT THEY HAD EVER SEEN BEFORE AT THE RATE AND THE PROPORTION
14 TO THE NUMBER OF FOLLOWERS. THEY OF COURSE ASKED WHAT HER
15 SECRETS WERE, AND MS. MARTIN AND MS. CATHELL DISCUSSED
16 REGULARLY THAT THEY'RE NOT GOING TO SHARE THIS INFORMATION. SO
17 I CAN APPRECIATE THE DIFFICULTY KIND OF US ON THE PUBLIC SIDE
18 HAVE TO FULLY GRASP WHAT IS ON THE BACK END OF WHAT WE'RE
19 SEEING, LIKE, A PUBLIC POST THAT WE'RE SEEING. BUT THE FACT OF
20 THE MATTER IS MS. MARTIN KNEW WHAT THIS WAS. THEY WERE WORKING
21 CLOSELY TOGETHER AND THEY WERE SPEAKING DAILY ABOUT HOW THIS
22 INFORMATION IS CONFIDENTIAL AND SHOULDN'T BE SHARED WITH
23 OTHERS. AND YOU'RE RIGHT IN THAT THE -- IN THESE TRADE SECRET
24 CASES A LOT OF THE INFORMATION IS TAKEN FROM ONE PERSON AND
25 SHARED TO OTHERS. NOW, IF MS. MARTIN JUST LEFT MS. CATHELL'S

1 EMPLOYMENT AND, YOU KNOW, STARTED SOME OTHER BUSINESS, THAT
2 WOULDN'T BE THE CONCERN HERE. SHE TOOK THAT INFORMATION, AND
3 WHILE IT'S ESSENTIALLY ONE IN THE SAME BECAUSE IT'S HER
4 COMPANY, THAT'S WHAT SHE HAS SHARED HER INFORMATION WITH THE
5 WEAR TO WANDER BUSINESS AND ACCOUNT. SHE KNEW, YOU KNOW, WHAT
6 SHE WAS DOING WAS -- SHE SHOULD NOT BE DOING BECAUSE THERE'S
7 LOTS OF DISCUSSIONS WITH MS. CATHELL AND MS. MARTIN ABOUT THESE
8 OTHER COPYCAT ACCOUNTS AND THE, YOU KNOW, THE FACT THAT WE
9 CAN'T BELIEVE THEY'RE COPYING US, I CAN'T -- YOU KNOW, I CAN'T
10 BELIEVE IT. BUT THE DIFFERENCE THERE IS THAT THOSE COPYCAT
11 ACCOUNTS NEVER WORKED WITH J. CATHELL AND HAD NO WAY OF KNOWING
12 WHAT J. CATHELL WAS DOING OR NOT DOING ON THE BACK END OF
13 THINGS.

14 AND SO THE OTHER -- YOU KNOW, WE HAVE -- IN FILING THIS
15 MOTION WE RECOGNIZE THAT THERE IS THIS DIFFICULT NATURE OF THE
16 COMBINATION OF THE PUBLIC AND NON-PUBLIC INFORMATION. THAT
17 DOESN'T NECESSARILY MEAN THAT THE NON-PUBLIC INFORMATION WITH
18 ITS PUBLIC COMPONENTS CAN'T QUALIFY AS A TRADE SECRET, WHICH IS
19 WHY WE'VE NARROWLY TAILORED OUR REQUEST IN THE T.R.O. MOTION TO
20 JUST PROTECT MS. CATHELL'S CONFIDENTIAL INFORMATION. YOU KNOW,
21 THE DEFENDANTS IN THEIR BRIEF FOCUS ON THIS, YOU KNOW,
22 MS. CATHELL TRYING TO SHUT DOWN THEIR BUSINESS OR HAVE A
23 MONOPOLY ON SOMETHING OR, YOU KNOW, JUST ESSENTIALLY RUIN THEIR
24 ENTIRE BUSINESS MODEL, AND THAT'S NOT THE CASE. WE'RE NOT
25 SEEKING FOR HER TO SHUT DOWN HER BUSINESS OR TO CLOSE HER

1 ACCOUNTS OR ANYTHING LIKE THAT. WE JUST WANT TO PROTECT J.
2 CATHELL'S CONFIDENTIAL PROPRIETARY INFORMATION THAT MS. CATHELL
3 HAS SPENT YEARS AND A LOT OF MONEY FORMULATING.

4 THE COURT: SO YOU'RE SAYING THAT THE SITE COULD
5 CONTINUE TO LOOK AS IT DOES NOW, IT'S JUST THE BACK-END
6 INFORMATION THAT HAS YOU CONCERNED?

7 MS. AMIRFAZLI: YES. NOW, WE DO BRING SOME CLAIMS
8 FOR THE TRADEDRESS, BUT THOSE ARE SECONDARY TO THIS PROTECTING
9 THE TRADE SECRETS. BUT YOU'RE RIGHT. SO WE'RE -- WHAT WE'RE
10 SEEKING TO PROTECT IS JUST HER CONFIDENTIAL INFORMATION. WE'RE
11 NOT TRYING TO --

12 THE COURT: AND HOW DO YOU KNOW WHAT SHE'S DOING IN
13 THE BACK END OF HER SITE?

14 MS. AMIRFAZLI: WELL, WITH FILING THIS MOTION, WE
15 WOULD -- YOU KNOW, IF WE HAD A ORDER THAT GRANTED ESSENTIALLY
16 THE LIMITED RELIEF THAT WE'RE REQUESTING, IT WOULD REQUIRE A
17 LITTLE BIT OF SELF-POLICING AND, YOU KNOW, REPRESENTATIONS FROM
18 HER THAT SHE WILL NOT BE USING THAT CONFIDENTIAL INFORMATION.
19 WE HAVE NOT RECEIVED THOSE ASSURANCES. YOU KNOW, WHEN
20 MS. CATHELL NOTICED THIS WEAR TO WANDER ACCOUNT AND FIGURED OUT
21 MS. MARTIN WAS RUNNING IT WHILE SHE WAS STILL EMPLOYED AT J.
22 CATHELL, SHE APPROACHED HER, AND MS. MARTIN ADMITTED THAT SHE
23 SAW AN OPPORTUNITY AND SHE TOOK IT. SO SHE HAD -- SHE WAS
24 WORKING, YOU KNOW, THEY WERE WORKING.

25 THE COURT: SO YOU'RE SAYING SHE ADMITTED THAT SHE'S

1 USING THE SAME BACK-END STRATEGY, NOT JUST THE SAME
2 FORWARD-FACING --

3 MS. AMIRFAZLI: THAT'S OUR UNDERSTANDING OF, YES,
4 WHAT SHE HAS SAID BECAUSE THAT IS HOW, YOU KNOW, SHE SAW -- SHE
5 WAS ABLE TO SEE WHAT WE DON'T SEE OF HOW SUCCESSFUL EVERYTHING
6 WAS. WHAT MS. CATHELL HAD SPENT TIME AND MONEY IMPLEMENTING
7 AND CREATING AND TRIAL-AND-ERROR PROCESS, SHE SAW THE WAY IT
8 WENT FROM THE PRE-REBRAND THROUGH THE REBRAND TO, YOU KNOW, THE
9 TIME IN WHICH SHE WAS TERMINATED. AND SO SHE SAW THAT.

10 THE COURT: I THINK YOUR TIME IS UP, SO THANK YOU. I
11 APPRECIATE THAT. AND I'LL HEAR FROM DEFENSE COUNSEL NOW.

12 MS. AMIRFAZLI: THANK YOU, YOUR HONOR.

13 THE COURT: YOU'RE WELCOME.

14 MR. CONNORS: GOOD MORNING, YOUR HONOR.

15 THE COURT: GOOD MORNING.

16 MR. CONNORS: PLEASURE TO BE HERE. I'VE -- THIS IS
17 THE FIRST TIME I'VE BEEN IN THIS COURT, SO -- AND I DON'T GET
18 TO GO OVER THERE (VERBATIM) VERY MUCH, BUT -- AND MS. HARRIS,
19 THIS IS THE FIRST TIME OF ANY HEARING WHATSOEVER. SHE JUST GOT
20 LICENSED, SO WE'RE REALLY HAPPY TO BE HERE. BUT I KNOW YOU
21 DON'T WANT TO HEAR ALL THAT, SO I WANT TO DUMP INTO -- DIVE IN
22 ALL THESE INTERESTING ISSUES WE'VE GOT BEFORE US. FROM THE
23 DEFENDANT'S PERSPECTIVE AND, FRANKLY, FROM MY PERSPECTIVE, I'M
24 ESPECIALLY CONCERNED ABOUT THE POLICY THAT IT SEEMS TO BE
25 PROMOTING. I DON'T THINK -- FROM THE DEFENDANT'S PERSPECTIVE

1 WHAT IT SEEMS TO BE HAPPENING HERE IS WE'RE TRYING TO
2 MANIPULATE LIMITED MONOPOLIES THAT APPLY TO TRADE SECRETS AND
3 TRADEDRESS, AND EXTEND THEM TO PROTECTING A BUSINESS MODEL OR A
4 GENERALIZED AESTHETIC THAT, BY ALL ADMISSIONS, EVERYBODY DOES,
5 A LOT OF PEOPLE DO. YOU KNOW, IT EVEN BEGS THE QUESTION AS WE
6 SIT HERE AND TALK ABOUT -- HEAR YOU AND PLAINTIFF'S COUNSEL
7 TALK ABOUT COPYCATS, WHO'S THE COPYCAT? YOU KNOW, WE DON'T
8 EVEN KNOW, RIGHT, WHO CAME FIRST. I THINK THE COURT CAN EVEN,
9 FRANKLY, TAKE JUDICIAL NOTICE OF THE FACT WE JUST SCROLL
10 THROUGH INSTAGRAM, YOU CAN SEE A LOT OF THINGS LIKE THIS,
11 RIGHT. NOW, OBVIOUSLY WE HAVE TO DIVE INTO THE SPECIFICS,
12 RIGHT. AND SINCE WE'VE TALKED A LOT ABOUT IT ALREADY, I'LL
13 START WITH TRADE SECRETS.

14 I HAVE TO SET THE RECORD STRAIGHT. I DON'T SEE ANYWHERE
15 IN THE RECORD WHERE MY CLIENT ADMITTED TO USING ANY
16 CONFIDENTIAL INFORMATION. FRANKLY, WE REALLY DON'T KNOW WHAT
17 IT IS. I'M VERY CONCERNED BY THAT BECAUSE ALL THE LAW SAYS IS
18 IT HAS TO BE -- CLEARLY WE DON'T EXPECT THE PLAINTIFF TO
19 LITERALLY TELL US NUMBERS OR SOURCE CODE OR WHATEVER THE TRADE
20 SECRET MAY BE IN A PARTICULAR CASE. THERE'S A BALANCE BETWEEN
21 DISCLOSING THE TRADE SECRET AND GIVING US BOUNDARIES OVER WHAT
22 THE TRADE SECRET IS, BUT WE WHAT WE HAVE IS JUST BOILERPLATE
23 FORMULAS, MARKETING STRATEGY, BASICALLY THE WORDS THAT SHOW UP
24 IN THE GEORGIA TRADE SECRETS ACT, THE UNIFORM TRADE SECRETS
25 ACT, AND THE DEFEND -- FEDERAL DEFEND TRADE SECRETS. I -- FOR

1 THE LIFE OF ME, I DON'T KNOW WHAT IT IS. AND WHAT I'M
2 CONCERNED BY IS WHAT IT SOUNDS LIKE THE COURT IS CONCERNED BY,
3 EVERYTHING THAT WE'VE DISCUSSED IS PUBLICLY AVAILABLE. IF
4 WE'RE TALKING ABOUT TIMING, ADVERTISING CAN BE SEEN BY THE
5 PUBLIC. IT SEEMS THAT BY ALL ADMISSIONS LIKE TO KNOW SEES A
6 LOT OF THIS STUFF AND THEY'RE CLEARLY SOMEBODY THAT'S NOT
7 WITHIN THE SPHERE OF TRADE SECRET PROTECTABILITY EITHER.

8 WE EVEN GO TO -- THERE'S A COUPLE OF CASES, ONE IN
9 PARTICULAR THAT MIGHT BE NOTABLE, THAT WERE CITED IN THE REPLY
10 BRIEF. THERE'S ESSEX GROUP VS. SOUTH WIRE COMPANY, AND THAT'S
11 A REALLY GOOD EXAMPLE FOR OUR SIDE. IN THAT CASE WE HAD
12 POTENTIAL THEFT OF THE SOURCE CODE, AND IT SAYS LITERALLY
13 SOURCE CODE. AND THEN THEY THOUGHT ABOUT BASICALLY, WELL, HOW
14 SPECIFIC DO YOU HAVE TO BE ABOUT WHAT THE SOURCE CODE IS? DO
15 YOU HAVE TO PRODUCE THE SOURCE CODE? WELL, OF COURSE THE
16 ANSWER IS, NO, BECAUSE THEN YOU DIVULGE THE TRADE SECRET, BUT
17 WE KNOW WE'RE TALKING ABOUT SOURCE CODE THAT PROGRAMMERS WROTE.
18 I STILL DON'T KNOW WHAT WE'RE TALKING ABOUT HERE TODAY.

19 THE COURT: WELL, I GUESS WHAT I HEAR FROM THE
20 PLAINTIFF'S PERSPECTIVE, WHAT THEY'RE SAYING IS THAT THEIR
21 ALLEGATION IS THAT WHEN WE PEEL BACK THE LAYERS AND LOOK AT
22 WHAT DEFENDANT IS DOING, WHAT WE'RE GOING TO SEE IS THAT THE
23 TIMING, THE COMBINATIONS OF HOW THEY APPROACH, LIKE, DIFFERENT
24 COMPANIES AND ALL OF THAT IS GOING TO LOOK THE SAME. SO WHEN
25 WE PULL BACK THE LAYER AND WE COMPARE EVERYTHING THAT'S GOING

1 ON IN TERMS OF THE BACK-END THING, THAT IS GOING TO BE
2 IDENTICAL. AND THAT THAT IS THE PROBLEM, IS THAT ALL OF THAT
3 STRATEGY AND ALL OF THAT IS GOING TO BE THE SAME WHEN WE LOOK
4 BACK AT THAT. THAT'S MY UNDERSTANDING OF THEIR POSITION.

5 MR. CONNORS: AND I WOULD AGREE. I AGREE THAT'S
6 THEIR POSITION, BUT I'D SAY WHERE IS THAT ACTUALLY PLED IN
7 THE -- AND ALLEGED IN THE PARTICULARS? AND WHAT I MEAN BY THAT
8 IS WHAT I THINK IS PLED AND ALLEGED IN DECLARATIONS IS, IT HAS
9 THE SAME LOOK AND FEEL. BASICALLY THEY DESCRIBE A TRAVEL BLOG
10 WHERE YOU SAY, WOULDN'T YOU LIKE TO TRAVEL TO THIS DESTINATION
11 AND WOULDN'T IT BE GREAT TO WEAR THIS ENSEMBLE THAT DAY? BUT
12 WHAT -- BUT (VERBATIM) YOUR HONOR JUST DESCRIBED WOULD REQUIRE
13 EVIDENCE OF ON THIS DAY I POSTED ABOUT TRAVELING TO ROME AND
14 WEARING THESE PARTICULAR PRODUCTS, AND WEAR TO WANDER DID THE
15 SAME THING THAT'S NOT ALLEGED ANYWHERE. AND TRUTH BE TOLD, I
16 DON'T THINK THAT EVER HAPPENED, RIGHT. SO I DON'T THINK THAT'S
17 PLED OR ALLEGED, AND THEY HAVE A HEAVY BURDEN TO MEET TO GET
18 WHAT THEY'RE ASKING FOR, VERY HEAVY BURDEN TO MEET. CERTAINLY
19 PERHAPS, YOU KNOW, MAYBE IN DISCOVERY THEY FIND SOMETHING LIKE
20 THAT, BUT NONE OF THAT IS IN THE RECORD AT THE MOMENT. I DON'T
21 THINK THEY'RE GOING TO FIND SOMETHING LIKE THAT. IT'S
22 CERTAINLY ALL PUBLICLY AVAILABLE, IF THEY WANTED TO, TO PLEAD
23 SUCH A THING. AND I THINK IT BEARS TO YOUR HONOR'S POINT -- I
24 KEPT WRITING THIS DOWN AS Y'ALL WERE TALKING -- IT SEEMS THAT
25 THERE'S A -- ALMOST A PROXIMATE CAUSE ISSUE IN THAT THAT'S THE

1 SORT OF THING I JUST DESCRIBED THAT YOU WOULD NEED TO SHOW,
2 RIGHT, THAT YOU WOULD NEED TO SHOW THAT HER TIMING WAS
3 IMPECCABLE, SHE WAS BEATING HER TO THE PUNCH PERHAPS EVEN. AND
4 NONE OF THAT'S ALLEGED. NONE OF THAT'S ALLEGED, AND I DON'T
5 THINK ANY OF THAT ACTUALLY EXISTS.

6 ON THAT NOTE AS WELL, YOUR HONOR, I'M CURIOUS TO KNOW, YOU
7 KNOW, FOCUSING ON THOSE OTHER ELEMENTS, NOT JUST THE MERITS,
8 BUT THE OTHER ELEMENTS, INJUNCTIVE RELIEF. IT SEEMS WE DON'T
9 EVEN KNOW WHAT THE DAMAGES ARE. AND ON THE ONE HAND YOU CAN
10 SAY, WELL, MAYBE WE CAN USE DISCOVERY TO FIND THAT OUT, IN
11 WHICH CASE THE COURT SHOULD GRANT THE INJUNCTION. AND ON THE
12 OTHER HAND WOULD SAY, WELL, IF YOU DON'T HAVE ANY DAMAGES,
13 THAT'S A NECESSARY ELEMENT, SO YOU LOSE ALL TOGETHER. AND
14 WHAT'S CURIOUS TO ME IS THIS ISN'T LIKE GOING OUT AND BUYING
15 LUNCH TODAY, RIGHT. IF I SAY I'M GOING TO GO TO MCDONALD'S
16 TODAY, THEN THAT'S TO THE DETRIMENT OF WENDY'S, RIGHT. IT'S AN
17 EITHER/OR PROPOSITION. THIS IS NOT AN EITHER/OR PROPOSITION.
18 IT COULD ONLY BE AN EITHER/OR PROPOSITION IN THE SCENARIO I
19 JUST DESCRIBED. AND THAT'S NOT ALLEGED. WHAT WE'RE ALLEGING
20 IS -- TALKING ABOUT IS GENERAL AESTHETICS, NOT SPECIFIC POST
21 WITH SPECIFIC EXACTING CONTENT. NONE OF THAT'S ALLEGED
22 ANYWHERE. AND SO I THINK THAT'S A VERY CRITICAL DIFFERENCE.
23 SO ON TRADE SECRETS, I DON'T THINK WE KNOW WHAT THE BOUNDARIES
24 ARE OF THE TRADE SECRET. AND I THINK THE COURT, ESPECIALLY
25 UNDER RULE 65, IN CONTEMPLATING ISSUING SUCH A ORDER, IT HAS TO

1 BE VERY SPECIFIC. AND WE STRONGLY DISAGREE THAT THIS IS NOT
2 NARROWLY TAILORED, RIGHT. WHAT THEY'RE ASKING FOR IS THAT MY
3 CLIENT PUT HER INSTAGRAM IN ARCHIVE MODE. IN OTHER WORDS,
4 SHIELD IT FROM PUBLIC VIEW, WHICH WOULD MAKE IT WORTHLESS FOR
5 THE DURATION OF THE PROCEEDING. SO PERHAPS MONTHS OR LONGER,
6 RIGHT, HER BUSINESS IS SHUT DOWN. THAT'S WHAT THEY'RE ASKING
7 FOR. I -- GRANTED THEY'RE NOT ASKING FOR DELETION, RIGHT. BUT
8 IT STOPS RIGHT HERE AND NOW. THAT'S WHAT THEY'RE ASKING FOR.

9 IT SEEMS THE OTHER THING THAT'S QUITE OVERBROAD IS THEY'RE
10 ASKING THE COURT TO SORT OF LET THEM FISH THROUGH ALL MY
11 CLIENT'S ELECTRONICS LOOKING FOR A TRADE SECRET THAT'S NOT
12 DEFINED, RIGHT. THERE HAS TO BE SOME EXACTINGNESS (VERBATIM)
13 THERE TO SOME DEGREE. EVEN DISCOVERY WOULD, RIGHT, PUT SOME
14 CONFINES OVER WHAT PEOPLE CAN LOOK FOR WHEN THEY'RE LOOKING FOR
15 TRADE SECRET. SO I THINK WE NEED TO KNOW WHAT THE TRADE SECRET
16 IS.

17 I DON'T KNOW. I DON'T THINK THERE'S A LOT MORE FOR ME TO
18 SAY ABOUT THE TRADE SECRET ISSUES OTHER THAN IT'S JUST NOT
19 WELL-DEFINED, ALTHOUGH I WILL ADD I THINK IT IS IMPORTANT FOR
20 THE COURT TO NOTE, WHICH REALLY WASN'T DISCUSSED FROM THE
21 PLAINTIFFS UP HERE, IS WHAT REASONABLE MEANS HAVE BEEN USED
22 HERE, RIGHT. SO EVEN IF WE GRANT THAT IT'S BEEN PROPERLY
23 DEFINED, THEN THE NEXT QUESTION IS WHAT PROPER MEANS HAVE BEEN
24 USED. THE ONLY THING INVOKED BY THE PLAINTIFF IS THERE'S
25 PASSWORDS. CLEARLY BY CONTEXT THOSE PASSWORDS ARE, SAY, ON

1 INSTAGRAM. IF ANY OF US GO -- SET UP AN INSTAGRAM ACCOUNT,
2 THERE'S A PASSWORD. THAT'S SIGNIFICANT BECAUSE THAT'S NOT
3 SOMETHING THAT THE PLAINTIFF IMPLEMENTED HERSELF. AND THE
4 PASSWORD'S MEANT TO KEEP OUT EVERYBODY BUT MY CLIENT OR THE
5 OWNER, MS. CATHELL. SORRY. I HAVE TO PAUSE. I WAS
6 PRONOUNCING IT DIFFERENTLY. MS. CATHELL. THERE'S NOTHING IN
7 WRITING. THERE'S NO CONTRACT SAYING, KEEP THESE THINGS SECRET.
8 AND I DON'T THINK THERE WAS REALLY -- THE ACTUAL EXHIBIT
9 SUBMITTED --

10 THE COURT: WELL, I THINK THAT THERE IS NOT
11 NECESSARILY A REQUIREMENT. I MEAN, CERTAINLY IT'S BETTER THAT
12 THERE IS MORE FORMALITY WITH THE NON-COMPETE OR A
13 CONFIDENTIALITY AGREEMENT OR SOMETHING IN THAT RESPECT. BUT, I
14 MEAN, I DO THINK THAT THIS CAN ESTABLISHED WITH OF COURSE THE
15 DEALING AND EXPECTATIONS AND KIND OF MORE OF THIS INFORMAL TYPE
16 EVIDENCE TO SHOW THAT THERE IS THIS EXPECTATION AND THIS KIND
17 OF -- THESE STATEMENTS THAT WERE MADE BY THE DEFENDANT IN THESE
18 MESSAGES THAT INDICATED THAT SHE UNDERSTOOD THAT THIS WAS KIND
19 OF A SECRET-TYPE THING BETWEEN THOSE TWO.

20 MR. CONNORS: I AGREE. YOU CERTAINLY DON'T NEED A
21 WRITTEN CONTRACT PER SE, BUT I THINK IT'S VERY IMPORTANT. THE
22 OTHER ISSUE I THINK THAT EXISTS THERE IS THE ACTUAL EVIDENCE,
23 IF YOU LOOK AT THOSE EXHIBITS, IS NO WHERE ANYBODY SAYING, HEY,
24 DID YOU KNOW THIS THING, RIGHT, THIS PARTICULAR DATA, WHICH IS
25 NEVER IDENTIFIED, AGAIN, IS SECRET AND I DON'T WANT YOU TO

1 DISCLOSE IT? THE CLOSEST I SEE IN ONE OF THE TEXTS THAT WERE
2 PRESENTED IN THE ORIGINAL COMPLAINT IS ALLUDING TO FINANCIAL
3 DATA. BUT THEN I THINK YOU GO BACK TO THIS CAUSAL PROBLEM WE
4 HAVE, WHICH IS, HOW WOULD KNOWLEDGE OF PARTICULAR PROFITABILITY
5 BE ACTUALLY ANYTHING THAT MY CLIENT WOULD USE OR HAS BEEN
6 ALLEGED TO BE USED TO HER ADVANTAGE? SO THERE HAS TO BE
7 SOMETHING. I WOULD AGREE IT DOESN'T ABSOLUTELY HAVE TO BE A
8 WRITTEN CONTRACT, BUT IT OUGHT TO BE UNDER THESE CIRCUMSTANCES
9 AND WITHOUT THAT, IT'S HER HEAVY BURDEN TO PROVE, RIGHT, TO GET
10 AN INJUNCTION OF THIS KIND, THERE WAS AN ACTUALLY, NOT JUST
11 UNDERSTANDING, BUT AGREEMENT, RIGHT, ESPECIALLY IF SHE'S AN
12 INDEPENDENT CONTRACTOR, THAT THESE CERTAIN THINGS WERE SUPPOSED
13 TO BE KEPT CONFIDENTIAL, WHATEVER THOSE THINGS ARE. SO I THINK
14 THAT'S STILL SIGNIFICANT.

15 TO MOVE TO THE -- I'LL SAY TRADEDRESS AND AN OVERARCHING
16 THING THAT DOES CONCERN ME, ESPECIALLY WITH REGARD TO ELEMENT
17 FOUR OF -- FOR INJUNCTIVE RELIEF, SO THAT IS THE POTENTIAL HARM
18 TO THE PUBLIC. AGAIN, I THINK THERE'S A VERY, VERY BROAD
19 POTENTIAL ABUSE OF THE LIMITED MONOPOLY POWER THAT MIGHT ATTACH
20 TO TRADEDRESS, RIGHT. IF WE'RE TRYING TO CONVERT TRADITIONAL
21 TRADE DRESS PROTECTION LIKE THE WRAPPER ON A CANDY BAR, WE'RE
22 TRYING TO CONVERT THAT TO PROTECTION OF AN INSTAGRAM, A
23 GENERALIZED INSTAGRAM AESTHETIC OR A BUSINESS MODEL. AND
24 THAT'S SIGNIFICANT. AND THE -- AND THE REQUESTED ORDER
25 REFLECTS MAKE THIS ARCHIVAL. NOW, GRANTED, I UNDERSTAND THE

1 ORDER ONLY APPLIES TO MY CLIENT, BUT CONCEIVABLY THE REASONING
2 APPLIES TO EVERYBODY. EVERY COPYCAT ACCOUNT THIS REASONING
3 APPLIES TO IF SHE HAS PROTECTABLE TRADEDRESS OF THE KIND
4 DEFINED IN THE COMPLAINT. AND WHAT'S UNUSUAL ABOUT WHAT'S
5 DEFINED IN THE COMPLAINT IS THAT IT'S NOT -- FOR EXAMPLE, A
6 GOOD EXAMPLE, I THOUGHT WE WERE IN ATLANTA. IT MIGHT BE A GOOD
7 EXAMPLE, COCA-COLA, VERY SIMPLE TRADEDRESS. IT HAS A
8 PARTICULAR SHAPE, IT HAS A PARTICULAR DISTINCTIVE RED
9 BACKGROUND, HAS A DISTINCTIVE FONT STYLE, WHICH PROBABLY HAS A
10 NAME. I DON'T KNOW IT. AND IT SAYS COCA-COLA. MAYBE IT SAYS
11 CLASSIC OR CHERRY OR WHATEVER THE FLAVOR IS, RIGHT. YOU NOTICE
12 THERE'S NO COLOR ALLEGED IN THE DESCRIPTION IN THE COMPLAINT
13 WHAT THIS TRADEDRESS IS. THERE'S NO PARTICULARIZED FONT STYLE.
14 THERE'S NO PARTICULARIZED NAME. IN FACT I THINK BY ALL
15 ADMISSIONS EVERYBODY KNOWS THE COURT CAN TAKE JUDICIAL NOTICE
16 OF THE FACT THAT IF YOU GO LOOK AT THESE ACCOUNTS ON INSTAGRAM,
17 THE FIRST THING PROBABLY ANY READER SHOULD NOTICE IS THE
18 ACCOUNT NAME AND THE PICTURE ASSOCIATED. IF YOU GO TO
19 MS. CATHELL'S ACCOUNT, YOU SEE HER PICTURE AND YOU SEE J.
20 CATHELL AFTER EVERY SINGLE POST AND YOU SEE A WATERMARK IN
21 EVERY SINGLE POST. SO WHAT WE'RE LEFT WITH IS BASICALLY A
22 CLAIM TO LAYERING, WHICH THEY'VE ALREADY ADMITTED IN REPLY,
23 THAT'S FUNCTIONAL, WHICH CAN'T BE PROTECTABLE BECAUSE IT
24 MANIPULATES POTENTIALLY THE ALGORITHM THAT LIKE TO KNOW AND
25 INSTAGRAM USE. AND WHAT ARE WE LEFT WITH, WELL, IT LITERALLY

1 DESCRIBES PAIRING AN OUTFIT WITH A PARTICULAR DESTINATION.
2 THAT'S JUST NOT TRADEDRESS. WE'RE NOT DESCRIBING WRAPPERS AND
3 PRODUCT PACKAGING. AND IN THIS CASE WHEN WE'RE TALKING ABOUT
4 PRODUCT DESIGN -- AND THE SUPREME COURT CASES WE CITED, VERY
5 HEAVY BURDEN TO DEMONSTRATE THAT PRODUCT DESIGN IS
6 TRADEDRESS-PROTECTABLE BECAUSE NOW YOU'RE GETTING IN THE PATENT
7 AREA AND YOU'RE TRYING -- POTENTIALLY YOU MIGHT BE GIVING A
8 MONOPOLY TO A WHOLE PRODUCT RATHER THAN PARTICULAR SOURCE
9 INDICATOR BRANDING ON THE PRODUCT. AND SO THAT IS, I THINK, AN
10 EXCEPTIONAL THING THE COURT NEEDS TO CONSIDER. THIS ISN'T
11 TRADEDRESS-PROTECTABLE. AND, MOREOVER, IT WOULD BE VERY
12 ONEROUS TO ISSUE AN ORDER OF THAT KIND BECAUSE THAT REASONING
13 WOULD APPLY TO COUNTLESS OTHERS ON INSTAGRAM IF YOU CAN PROTECT
14 THE NATURE OF THIS BLOG IN WHICH IT PAIRS OUTFITS WITH
15 DESTINATIONS. AND A PARTICULAR NOTE, YOUR HONOR, THE --
16 THERE'S TWO FUNCTIONALITY DOCTRINES REMEMBER. IT'S PLAINTIFF'S
17 BURDEN TO PLEAD THAT IT'S NON-FUNCTIONAL. THAT'S WRITTEN IN
18 THE LANHAM ACT. THERE'S TWO FUNCTIONALITY DOCTRINES WHERE THIS
19 FAILS ON. THE ONE IS CALLED THE CLASSIC DOCTRINE. IT'S STATED
20 IN CASES LIKE TRAFFICS (PHONETIC), U.S. SUPREME COURT CASE
21 INVOLVING A ROAD SIGN WITH A SPRING (PHONETIC). THERE ARE
22 OTHERS. ANOTHER PROMINENT ONE WE TALK ABOUT IS LOUBOUTIN, THE
23 FAMOUS SHOE WHERE THEY HAVE A RED UNDERSOLE, BUT THEY TRY TO
24 ASSERT, HEY, WE HAVE -- WE HAVE PROTECTION, TRADEDRESS
25 PROTECTION OVER AN ENTIRELY RED SHOE MADE BY YVES SAINT

1 LAURENT1. AND EVERY TIME THOSE COURTS SAID, HEY, LET'S DIAL IT
2 BACK, THAT IS TOO BROAD. YOU CAN'T CLAIM THAT, RIGHT. AND
3 ESPECIALLY THERE YOU HAVE A FUNCTIONALITY ISSUE. AND MOST
4 SIGNIFICANTLY IN THIS CIRCUIT THE DIPPIN' DOTS CASE VS. -- I
5 ALWAYS FORGET THE LAST NAME -- FROSTY BITES, RIGHT, WHERE WE
6 SAY, HEY, IF THIS HAS SOME FUNCTIONAL PURPOSE THAT IS ALGORITHM
7 (VERBATIM) OF IT, END OF DISCUSSION. YOU CAN'T PROTECT IT.
8 AND IN THIS CASE WE HAVE A LOT OF FUNCTIONAL PURPOSES. THE
9 LIKE TO KNOW ALGORITHM AND MANIPULATION IS ONE, BUT MERELY THE
10 FACT OF, IS THIS DICTATED BY THE CIRCUMSTANCES OF INSTAGRAM?
11 AND IT IS. THERE'S ONLY SO MUCH REAL ESTATE TO PUT TEXT DOWN
12 AND PICTURES DOWN. SO OF COURSE IF YOU ENDEAVOR TO MAKE A
13 TRAVEL BLOG IN WHICH YOU'RE GOING TO PUT OUTFITS WITH TRAVEL
14 DESTINATIONS, THEN THIS IS SELF-FULFILLING. AND THE COURTS SAY
15 AND THE ELEVENTH CIRCUIT HAS SAID THAT'S A KILLER, THAT MAKES
16 IT FUNCTIONAL. DIPPIN' DOTS WAS THAT CASE. IF YOU WANT TO
17 MAKE FLASH-FREEZE ICE CREAM THAT COME UP IN LITTLE BEADS, WELL,
18 THE PROCESS OF MAKING IT MAKES THEM COME UP IN LITTLE BEADS, SO
19 IT'S DICTATED BY THE PLATFORM, THE PRODUCT YOU'RE MAKING
20 ITSELF, AND WE'RE NOT GOING TO ALLOW A MONOPOLY ON THAT.

21 THEN THERE'S AESTHETIC FUNCTIONALITY THAT SAYS EVEN
22 GRANTING THAT, IF YOU'VE UNNECESSARY LIMITED POTENTIAL
23 COMPETITORS TO ONLY A FEW VARIATIONS, YOU STILL LOSE. IT'S
24 STILL FUNCTIONAL. AND, AGAIN, WE HAVE THE PROBLEM OF JUST VERY
25 LIMITED REAL ESTATE ON INSTAGRAM. SO I THINK THAT'S ESPECIALLY

1 SIGNIFICANT. FORGIVE ME, YOUR HONOR, I'M TRYING -- I DON'T
2 KNOW WHY I'M CONFUSED. I'VE GOT PLENTY OF TIME.

3 THE COURT: YOU'VE GOT 15 MINUTES.

4 MR. CONNORS: 15 MINUTES. OKAY. FORGIVE ME.

5 THE COURT: YES.

6 MR. CONNORS: AND THAT GOES TO IRREPARABLE INJURY. I
7 THINK YOUR HONOR IS RIGHT. IN THE WORST CASE SCENARIO THIS CAN
8 BE -- THIS COULD BE FIXED BY MONEY.

9 THE COURT: WELL, AND EXPLAIN -- I THINK THAT IT'S --
10 IT IS A LITTLE COMPLICATED IN TERMS OF I CAN SEE A SCENARIO
11 WHERE THE PLAINTIFF CAN BASICALLY ARGUE THAT ALL THIS SUCCESS
12 IS DUE TO THE STOLEN CONFIDENTIAL INFORMATION OR TRADEDRESS OR
13 UNJUST ENRICHMENT OR ONE OF THESE CLAIMS THAT THEY'RE DEALING
14 WITH. AND THERE ARE A LOT OF CLAIMS HERE. BUT I THINK WHAT'S
15 MORE LIKELY IS THAT THERE ARE SOME PURCHASES AND THINGS THAT
16 HAPPEN APART FROM THE CONFIDENTIAL INFORMATION OR WHATEVER
17 CLAIM WE'RE GOING ON. SO IT DOES SEEM LIKE IT IS GOING TO BE
18 VERY DIFFICULT TO PARSE OUT WHAT IS DUE TO THE CONFIDENTIAL
19 INFORMATION OR SOME OF THESE OTHER THEORIES VERSUS WHAT WAS
20 JUST, OH, I LIKE THAT PURSE, YOU KNOW, IT'S CUTE, I BOUGHT IT,
21 THAT SALE MAYBE SHOULDN'T GO TO THE DAMAGES. AND PARSING OUT
22 WHY INDIVIDUAL PEOPLE MADE THAT PURCHASE SEEMS VERY DIFFICULT.
23 MR. CONNORS: I WOULD AGREE IT WOULD BE DIFFICULT,
24 BUT I THINK THAT DIFFICULTY WEIGHS AGAINST THE PLAINTIFF
25 BECAUSE IT'S THEIR BURDEN TO PROVE DAMAGES IN THE FIRST PLACE.

1 IT'S NOT THE SAME TO SAY, BECAUSE IT'S HARD TO PROVE DAMAGES,
2 WE'RE IRREPARABLY HARMED. WELL, NOW THEY JUST HAVE A DAMAGES
3 ISSUES, WHICH REALLY GOES TO AN ELEMENT OF ANY CLAIM YOU PLEAD
4 AT ALL, RIGHT. ANY ELEMENT REQUIRES DAMAGES. THE COURT
5 DOESN'T DEAL IN TRIFLINGS, RIGHT. SO THAT'S SIGNIFICANT FOR
6 THE PLAINTIFF. AND HERE AT THIS STAGE THEY HAVE A VERY HEAVY
7 BURDEN TO SAY I'M BEING DAMAGED IN SOME WAY, RIGHT. AND IT'S
8 NOT -- AND IT'S NOT JUST TO SAY, WELL, IT'S HARD TO MEASURE.
9 IT DOESN'T SOUND LIKE IT MAY BE DAMAGES AT ALL BECAUSE, AGAIN,
10 IT'S NOT THE SAME AS ME GOING AND DECIDING I'M GOING TO EAT AT
11 MCDONALD'S TODAY AND NOT BURGER KING. IF BURGER KING WERE
12 RUNNING FALSE ADS, THEN YOU MIGHT BE ABLE TO SHOW RELATIONSHIP
13 BETWEEN THE TWO IF I MADE A PURCHASING DECISION AS A RESULT.
14 THERE'S A WHOLE BUNCH OF DOMINOES THAT HAVE TO FALL IN THIS
15 CASE BEFORE WE GET TO THAT CONCLUSION. AND IT'S THEIR BURDEN
16 AND THEY HAVE A HEAVY BURDEN TO SHOW THAT. AND I DON'T THINK
17 THEY'VE SHOWN THAT AT ALL. TRADITIONALLY IN CASES, ESPECIALLY
18 INVOLVING TRADEDRESS MISAPPROPRIATION, BUT ANYTHING, I GUESS
19 WE'D BE DEALING WITH TRADE SECRETS TOO, DEALING WITH
20 COMPETITORS. NOW, I SUPPOSE WE SHOULD SAY YOU NEED SOME KIND
21 OF THIRD-PARTY EVIDENCE, RIGHT, SURVEYS OF CONSUMERS, AT LEAST
22 EVEN -- EVEN WITH REGARD TO THIS RELATED ISSUE OF WHETHER THERE
23 MIGHT BE CONFUSION, I HEARD THAT BROUGHT UP, WHY DOES THIS
24 THING LIKE THIS. WELL, IF WE DRAW THAT BACK TO OUR DISCUSSION,
25 THAT SAYS NOTHING TO US, THAT TELLS US NOTHING ABOUT DID

1 SOMEBODY PURCHASE THIS PURSE THROUGH A LINK FROM MY CLIENT
2 VERSUS MS. CATHELL. WHO KNOWS.

3 THE COURT: WELL, AND I WAS JUST THINKING ABOUT
4 CONFUSION. IT DOES SEEM LIKE CONFUSION IN THIS ARENA IS A
5 DIFFERENT CONCEPT THAN IN SOME DIFFERENT PRODUCTS-TYPE CASES
6 WHERE YOU HAVE -- I MEAN, MAYBE THIS IS TRUE IN THIS SPACE, BUT
7 IT SEEMS TO ME THAT CUSTOMERS ARE MORE INTERESTED IN THE
8 PRODUCT, WHETHER THEY LIKE IT OR NOT, THAN NECESSARILY BRAND
9 LOYALTY TO SOMEONE THAT RUNS A SITE. AND SO CONFUSION IS AN
10 INTERESTING ISSUE HERE BECAUSE EVEN IF THERE IS CONFUSION, THAT
11 DOESN'T NECESSARILY MEAN THAT SOMEONE WAS GOING WITH -- IT'S A
12 DIFFERENT CONCEPT WITH THESE BLOGS THAN I THINK IT WOULD BE,
13 LIKE, I'M TRYING TO BUY A KIND OF GLUE, I THOUGHT THIS WAS THIS
14 GLUE AND NOT THAT GLUE. THEY ACTUALLY ARE BUYING THE PURSE
15 THAT THEY WANT.

16 MR. CONNORS: I AGREE, YOUR HONOR, BECAUSE CONFUSION,
17 YOU KNOW, TALKING ABOUT TRADEDRESS -- IT'S AN ELEMENT OF
18 TRADEMARK INFRINGEMENT -- WOULD NOT BEAR ON THE PARTICULAR
19 PRODUCT THEY'RE ADVERTISING THAT DAY. THE CONFUSION WOULD HAVE
20 TO BE, I WAS LOOKING AT WEAR TO WANDER. THAT'S THE PRODUCT,
21 RIGHT. THE PRODUCT IS THE BLOG ITSELF, THE INSTAGRAM ACCOUNT
22 ITSELF. SO THE CONFUSION THAT THE PLAINTIFF WOULD HAVE TO SHOW
23 IS, I WAS LOOKING AT WEAR TO WANDER THINKING IT WAS J. CATHELL.
24 AND THAT'S, I THINK ON ITS FACE, JUST CAN'T BE TRUE BECAUSE OF
25 THE NATURE OF INSTAGRAM AND THAT YOU CAN SEE WHO THE ACCOUNTS

1 BELONG TO AND THERE ARE WATERMARKS. LAYOUT IS NOT SOURCE
2 INDICATOR. SO ANYBODY THAT SAYS TO MS. CATHELL OR ANYBODY ELSE
3 THAT SIMPLY SAYS, MAN, THESE TWO LOOK ALIKE, THAT'S NOT
4 TRADEMARK CONFUSION, RIGHT. THAT'S SOMETHING ELSE. THAT MIGHT
5 BE A RANGE OF THINGS, RIGHT. THAT MIGHT BE ANYTHING FROM, YOU
6 SHOULD STOP THAT COPYCAT. I MEAN, AS AN I.P. ATTORNEY I GET
7 THAT ALL THE TIME, BUT WE HAVE TO BE A LITTLE BIT MORE EXACTING
8 THAN THAT AS FAR AS TRADEMARK LAW IS CONCERNED. SO REALLY I
9 THINK WHAT YOUR HONOR IS DESCRIBING IS BRAND LOYALTY IN THIS
10 CASE -- MAN, I KEEP USING THE EXAMPLE OF MCDONALD'S. MAYBE I
11 HAVE A LITTLE BRAND LOYALTY TO MCDONALD'S, RIGHT. BUT BRAND
12 LOYALTY HERE IS I FOLLOW J. CATHELL ON INSTAGRAM AND I LIKE THE
13 FASHIONS SHE PUSHES AND I'D BE INTERESTED IN PURCHASING THOSE
14 THINGS AND I LOOK AT HER ALL THE TIME. THAT DOESN'T SEEM TO
15 REALLY INTERFERE WITH SOMEBODY WHO SAYS, YOU KNOW WHAT, I LIKE
16 WEAR TO WANDER BETTER BECAUSE I LIKE THEIR PICS OR I LIKE THE
17 TEXTS THEY WRITE, WHICH IS ALL GOING TO VARY, RIGHT, THE
18 DESCRIPTIVE TEXTS AND THE TRAVEL DESTINATIONS WENT WHEREVER
19 ELSE. AND WHAT'S CRITICAL, TOO, IS IF YOU GO -- YOU KNOW, AND
20 JUST PULL UP INSTAGRAM AND LOOK AT THESE TWO ACCOUNTS, J.
21 CATHELL IS PROMINENT, RIGHT. SHE -- HER FACE AND SHE'S
22 MODELING THE CLOTHES IN MANY OF HER POSTS. PEOPLE DON'T LOOK
23 AT AN INDIVIDUAL POST ON INSTAGRAM. THEY LOOK AT THE WHOLE
24 PANOPLY OF POSTS. IF YOU LOOK AT MY CLIENT'S POST, YOU'LL
25 NEVER -- YOU KNOW, THE FIRST TIME YOU MAY HAVE SEEN HER FACE IS

1 TODAY. SHE DOESN'T SHOW UP ON ANY OF THOSE THINGS. THAT'S
2 SUBSTANTIALLY DIFFERENT. I DON'T SEE HOW CONFUSION COULD
3 RESULT, AND, THEREFORE, THERE'S A LOW LIKELIHOOD OF SUCCESS ON
4 THE MERITS OF THIS GIVEN THOSE CIRCUMSTANCES.

5 THE COURT: WHY DON'T YOU TALK ABOUT THE EMPLOYEE
6 INDEPENDENT CONTRACTOR ISSUE. I DIDN'T TALK WITH PLAINTIFF'S
7 COUNSEL ABOUT THAT, BUT IT IS AN IMPORTANT ISSUE THAT I'M
8 FAMILIAR WITH FROM THE BRIEFING.

9 MR. CONNORS: YES, YOUR HONOR. IT'S AN INTERESTING
10 PROBLEM BECAUSE ON THE ONE HAND JUST AT THE OUTSET I'D SAY SOME
11 OF THE ISSUES WE JUST TALKED ABOUT DON'T RELY UPON IT, RIGHT.
12 YOU CAN CONCLUDE THAT THERE'S NO BOUNDED TRADE SECRET AND YOU
13 DON'T HAVE TO MAKE ANY CONCLUSION ABOUT EMPLOYMENT VERSUS
14 INDEPENDENT CONTRACTOR. YOU CAN CONCLUDE THIS ISN'T
15 TRADEDRESS -- THAT TRADEDRESS IS NOT RELATED TO IT AT ALL.

16 THE COURT: RIGHT.

17 MR. CONNOR: BUT AS TO EMPLOYMENT, AT A MINIMUM, I
18 THINK AT A VERY MINIMUM WE HAVE A SIGNIFICANT FACT DISPUTE THAT
19 MIGHT ALTER THE CALCULUS. AND IN MY ESTIMATION IT'S ON A
20 SPECTRUM. NO MATTER WHOSE LAW YOU LOOK AT -- AND IT'S
21 INTERESTING BECAUSE THE ONLY LAW WE REALLY HAVE TO LOOK AT IS
22 WAGE AND HOUR, WORKER'S COMP. THERE IS ONE SUPREME COURT CASE
23 I THINK WE CITED IN OUR BRIEF CALLED COMMUNITY FOR CREATIVE
24 NON-VIOLENCE VS. REED (PHONETIC). THAT DEALS WITH COPYRIGHT
25 BECAUSE THIS COMES UP IN COPYRIGHT BECAUSE OF THE PARTICULARITY

1 OF COPYRIGHT. IT DEPENDS WHO OWNS IT BASED UPON INDEPENDENT
2 CONTRACTOR VERSUS EMPLOYMENT. BUT THAT ALL IS TO SAY WE'RE
3 APPLYING SOME LAW THAT'S A LITTLE UNUSUAL BECAUSE NOW WE'RE
4 ASKING OURSELVES, WELL, WHAT DUTIES MIGHT BE INVOKED? AND I DO
5 THINK THEY'RE DIFFERENT, WHETHER THEY'RE AN INDEPENDENT
6 CONTRACTOR VERSUS AN EMPLOYEE. AND THEY CERTAINLY DO HINGE
7 UPON CONTROL, BUT CONTROL IS A SPECTRUM. IF I HIRE A PLUMBER
8 AND ASK THE PLUMBER TO BE THERE, AND WE DECIDE HE'S GOING TO BE
9 THERE AT 2:00, AND HE'S GOING TO FIX MY TOILET, I AM GOING TO
10 HAVE A DEGREE OF CONTROL OVER HIM AT THAT TIME.

11 ONE OF THE CASES THE PLAINTIFF CITED IN HER BRIEF, IT WAS
12 CALLED -- IT'S CALLED STOLLARD FILMS VS. BERNECKER (PHONETIC).
13 THAT INVOLVED A STUNTMAN ON A MOVIE PRODUCTION. AND THEY WERE
14 FIGHTING OVER INDEPENDENT CONTRACTOR VERSUS EMPLOYMENT STATUS.
15 OF COURSE, INTERESTINGLY ENOUGH, THESE CASES FREQUENTLY ARE THE
16 PROSPECTIVE EMPLOYEE (VERBATIM) WANTING TO GET OUT OF PAYING
17 BENEFITS OR WORKERS' COMP. THAT'S WHAT THIS CASE IS ABOUT,
18 WHICH IS INTERESTING HERE BECAUSE NOW OUR EMPLOYER, RESPECTIVE
19 EMPLOYER, WANTS THE BENEFITS OF SOMETHING SHE NEVER ACTUALLY
20 PAID THE GOVERNMENT FOR, SO TO SPEAK, BECAUSE SHE NEVER
21 WITHHELD TAXES, SHE NEVER PAID PAYROLL TAXES, SHE NEVER PAID
22 WORKER'S COMP, OR SHE NEVER DID ANY OF THAT -- IF WE HAVE A
23 1099, WHICH IS UNDISPUTED. SO IN THAT CASE WITH THE STUNTMAN
24 RIGHT, EVEN THEN YOU CAN SEE VERY, VERY DEEP CONTROL. AND THE
25 COURT RULED HE WAS AN EMPLOYEE. SO STUNTMAN, AS YOU CAN

1 IMAGINE, IS TO SHOW UP, USE ALL THE THINGS THE MOVIE PRODUCTION
2 GIVES THEM, ALL THE SAFETY EQUIPMENT, ALL THE PROPS, HAS TO BE
3 VERY EXACTING. AND THE COURT GOES INTO GREAT DETAIL SAYING IN
4 FACT WE TELL THE STUNTMAN HOW HIS ARM'S GOING TO BE POSED, VERY
5 EXACT. AND SO THERE'S A INCREDIBLE AMOUNT OF CONTROL, SO HE
6 MUST BE AN EMPLOYEE, AND, THEREFORE, HE'S ENTITLED TO WORKER'S
7 COMP, RIGHT. WE DON'T HAVE THAT HERE. WE CERTAINLY HAVE SOME
8 CONTROL. YOU'RE ALWAYS GOING TO HAVE SOME CONTROL, JUST LIKE
9 ME AND THE PLUMBER I HIRED TO FIX MY TOILET. BUT NOT THE LEVEL
10 OF CONTROL THAT MAKES THIS AN EMPLOYMENT CIRCUMSTANCE, RIGHT.
11 WHAT YOU HAVE IS INTERMITTENT CONDUCT. YOU DON'T HAVE A TIME
12 AND PLACE SOMEBODY SHOWS UP TO. YOU HAVE, I THINK, NO DISPUTE
13 THAT MY CLIENT KIND OF DID HER WORK AS SHE PLEASED, AND THAT
14 THINGS WERE SCHEDULED TO GO SORT OF AS THEY WERE. GRANTED, I
15 THINK MAKES SINCE IN THIS CASE THAT MS. CATHELL WOULD SAY, I'D
16 LIKE YOU TO POST THIS SOMETIME THIS DAY, RIGHT. THESE ARE ALL
17 NATURAL INCLINATIONS OF THE WORK WE'RE TALKING ABOUT HERE, BUT
18 THEY DON'T RESULT IN EMPLOYMENT. AND AT A MINIMUM FOR THIS
19 HEARING THEY DON'T SHOW THE -- MEET THE HEAVY BURDEN OF A
20 LIKELIHOOD OF SUCCESS ON THE MERITS BECAUSE THERE'S OBVIOUSLY
21 SIGNIFICANT DOUBT. AND HONESTLY THERE'S MORE STUFF I MIGHT
22 EVEN LIKE TO KNOW IN DISCOVERY, FRANKLY. BUT AT THE OUTSET I
23 THINK MAYBE THE BIGGEST GUIDING LIKE HERE WOULD BE, THE
24 PLAINTIFF SHOULDN'T BE ABLE TO HAVE HER CAKE AND EAT IT, TOO.
25 SHE DIDN'T PAY FOR ANY OF THE BENEFITS SHE'D NORMALLY PAY, ALL

1 THE BURDENS YOU WOULD HAVE GO -- HAVE ON THE -- WITH THE
2 GOVERNMENT ON TAXES AND WORKERS' COMP AND UNEMPLOYMENT. BUT
3 NOW WHEN SHE WANTS A DUTY, RIGHT, WHEN THE PLAINTIFF WANTS A
4 DUTY THAT WOULD ARISE IN EMPLOYMENT, WE SAY IT'S EMPLOYMENT,
5 THAT THERE'S A HEAVY BURDEN OF -- TO COME OVER THAT, AND THEN
6 YOU COMBINE THE FACT THAT THERE'S NOTHING IN WRITING BETWEEN
7 THE TWO EVEN SAYING, SETTING OUT ANY OF THE TERMS WE'RE TALKING
8 ABOUT, AT BEST WE'RE TALKING ABOUT SOME COURSE OF DEALING, AND
9 THAT'S QUITE SPECULATIVE AT THIS STAGE I'D SAY.

10 SO, YOUR HONOR, I THINK THAT LEAVES US WITH -- YOU'VE
11 ALLUDED TO THESE VARIOUS STATE LAW CLAIMS. YOU KNOW, I
12 HESITATE TO SIT AND REFUTE EVERY ONE. I THINK THEY'RE ALL
13 VARIOUSLY TIED TO EITHER THE FEDERAL CLAIMS TRADE SECRET --
14 TRADE SECRET -- OR, EXCUSE ME -- TRADEDRESS MISAPPROPRIATION.
15 YOU KNOW, MOREOVER, WE DO -- I KNOW IT'S NOT SET BEFORE THE
16 COURT TODAY, SO I'M NOT ATTEMPTING TO ARGUE EXCEPT THAT WE DO
17 HAVE A MOTION TO DISMISS. CERTAINLY, RIGHT, IF YOU RULED
18 POSITIVELY FOR OUR SIDE ON THE MOTION TO DISMISS, THEN THE
19 COURT SHOULDN'T BE ISSUING AN INJUNCTION ON ANY OF THE STATE
20 ISSUES. AND THERE'S A SIGNIFICANT ISSUE BECAUSE PERHAPS THE
21 COURT DOESN'T WANT TO EXERCISE SUPPLEMENTAL JURISDICTION IF YOU
22 CONCLUDE THAT THOSE TWO FEDERAL CLAIMS ARE NOT SUFFICIENTLY
23 PLED. AND SO I ENCOURAGE THE COURT, THEN, ON THOSE STATE
24 ISSUES TO CONSIDER THAT AND ALSO TO CONSIDER THE FACT THAT
25 EVERY SINGLE ONE OF THOSE, THE DAMAGES ARE TIED TO ONE OF THE

1 FEDERAL CLAIMS, RIGHT. SO, FOR EXAMPLE, CONVERSION. AND
2 CONVERSION'S A GOOD EXAMPLE BECAUSE YOU CAN'T CONVERT
3 INTANGIBLE PROPERTIES. THE ALLEGATION'S BASICALLY YOU STOLE
4 THE TRADE SECRETS. WELL, THAT'S INTANGIBLE. AND EVEN BY THEIR
5 OWN ACCOUNT, NOTHING'S IN WRITING, SO IT'S NOT LIKE THEY'RE
6 ALLEGING MY CLIENT TOOK A DIGITAL FILE OR SOMETHING IN WRITING
7 BECAUSE THEIR COMPLAINT SAYS THERE'S NOTHING IN WRITING ABOUT
8 ANY OF THESE TRADE SECRETS. ON THE MERITS, THAT'S NOT A
9 CONVERSION CLAIM. IT HAS TO BE CHATTEL PROPERTY. BUT
10 MOREOVER, RIGHT, WHAT ARE THE DAMAGES, YOU TOOK A TRADE SECRET.
11 WELL, IF THE COURT CONCLUDES THAT WE DON'T HAVE A SUFFICIENTLY
12 BOUNDED TRADE SECRET PLED, THEN THAT CLAIM GOES AWAY ANYWAY.
13 AND THAT'S TRUE OF ALL OF THOSE CLAIMS AS WAS CITED IN OUR
14 BRIEF. SO, YOU KNOW, I WOULD URGE THE COURT, ESPECIALLY, I
15 THINK, TO THE PUBLIC HARM, THE HARM THAT WOULD BE CAUSED TO MY
16 CLIENT, WHICH I THINK GREATLY OUTWEIGHS POTENTIAL MONEY RELIEF
17 AS TO THE THIRD ELEMENT OF INJUNCTIVE RELIEF, AND EVEN AS TO
18 IRREPARABLE HARM, I'M JUST NOT SEEING IT. SO I'D ENCOURAGE THE
19 COURT TO DENY THE MOTION FOR PRELIMINARY INJUNCTION. THANK
20 YOU, YOUR HONOR.

21 THE COURT: THANK YOU.

22 NOW, LET ME TALK TO YOU -- THERE'S A LOT OF DIFFERENT
23 THINGS TO TALK ABOUT, AND SO LET ME JUST START OFF WITH THE
24 T.R.O., BUT THAT'S WHAT WE'RE HERE TO TALK ABOUT TODAY, IS
25 WHETHER OR NOT THE T.R.O. SHOULD BE GRANTED. AND AS IT'S BEEN

1 SAID, THIS IS WHAT'S CALLED EXTRAORDINARY RELIEF. AND IT'S A
2 HIGH BURDEN FOR THE PLAINTIFF. THE PLAINTIFF HAS TO COME IN
3 AND ESTABLISH ALL OF THESE FACTS. AND BASICALLY IT'S KIND OF
4 THE COURT INITIALLY DECIDING THAT THE PLAINTIFF IS GOING TO WIN
5 AND PRESERVING THE STATUS QUO. SO IT'S A DIFFICULT REMEDY TO
6 GET AND IT'S A HIGH BURDEN, WHICH IS DIFFERENT THAN THE BURDEN
7 THAT COMES ALONG LATER IN THE CASE. AND ONE OF THE FACTORS THE
8 COURT LOOKS AT FIRST IS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON
9 THE MERITS. AND IT'S JUST NOT A LIKELIHOOD. IT'S A
10 SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS. AND THERE ARE
11 14 COUNTS IN THIS CASE. SOME OF THEM ARE BETTER THAN OTHERS.
12 SOME OF THEM ARE ACTUALLY, I THINK, ALMOST FRIVOLOUS, BUT SOME
13 OF THEM ARE POTENTIALLY WITH MERIT. THE TWO CATEGORY -- WELL,
14 I GUESS THE THREE CATEGORIES THAT ARE KIND OF THE MORE
15 CONCRETELY BRIEFED AND DISCUSSED ARE THE EMPLOYMENT-RELATED
16 CLAIMS, THE TRADE SECRET CLAIMS, AND THE TRADEDRESS CLAIMS.

17 IN LOOKING AT THE EMPLOYEE CLAIMS, THERE JUST SEEMS TO ME
18 A LOT OF QUESTIONS OF FACT ON THIS ISSUE. AND WHAT THAT MEANS
19 IS THAT I HAVE NOT SEEN THAT IT'S BEEN PROVEN AT THIS STAGE
20 BEFORE DISCOVERY, THAT THE DEFENDANT WAS AN EMPLOYEE WHO HAD
21 THESE DIFFERENT EMPLOYEE-RELATED OBLIGATIONS. I DON'T KNOW
22 WHAT ULTIMATELY THE ANSWER IS, BUT IT LOOKS LIKE THERE ARE
23 FACTS ON BOTH SIDES. AND IT LOOKS LIKE IT'S GOING TO BE A
24 QUESTION THAT MAY ULTIMATELY BE RESOLVED BY A JURY OR THAT
25 WE'VE GOT TO GET THE FACTS MORE CONCRETELY ESTABLISHED. SO FOR

1 THOSE CLAIMS I DO NOT FIND THAT THERE WAS A SUBSTANTIAL
2 LIKELIHOOD OF SUCCESS ON THE MERITS.

3 IN TERMS OF THE TRADE SECRET RELATED CLAIMS, I'M STILL
4 HAVING TROUBLE WITH THE DEFINITION OF WHAT THESE TRADE SECRETS
5 ACTUALLY ARE. AND IF I WERE TO GRANT AN INJUNCTION AND I HAVE
6 TO SAY WHAT THE TRADE SECRETS ARE, I'M STILL HAVING A
7 DIFFICULTY IN KIND OF PULLING OUT THE SECRET PART FROM THE
8 PUBLIC PART. THERE ALSO SEEMS TO BE SOME PRETTY BIG QUESTIONS
9 AS TO WHETHER THESE TRADE SECRETS WERE APPROPRIATELY PROTECTED,
10 AND, AGAIN, WHETHER THIRD PARTIES SUCH AS LIKE TO KNOW HAD
11 ACCESS TO THIS INFORMATION. SO THAT IS A DIFFICULT PART AS
12 WELL. AND I ALSO DON'T FIND THAT IT'S BEEN ESTABLISHED THAT
13 THE DEFENDANT IS -- HAS MISAPPROPRIATED THE TRADE SECRETS AND
14 IS ACTUALLY USING THE TRADE SECRETS. I THINK THAT THERE
15 CERTAINLY IS EVIDENCE THAT IF THERE ARE TRADE SECRETS, SHE'S
16 LIKELY USING THEM. BUT IT'S, AGAIN, ALL THE PLAINTIFF HAS IS
17 THIS ARGUMENT THAT SHE HAD ACCESS TO TRADE SECRETS AND HER SITE
18 PUBLICLY LOOKS LIKE THE SITE -- WHICH I THINK IS TRUE. IT DOES
19 LOOK LIKE IT -- THAT THESE SITES LOOK ALIKE, SO, THEREFORE, SHE
20 MUST BE USING THE TRADE SECRETS. BUT THAT'S SOMETHING THAT HAS
21 TO BE ESTABLISHED, AND I DON'T FIND THAT THESE FACTORS HAVE
22 BEEN MET.

23 THE TRADEDRESS ISSUE TO ME IS COMPLICATED. AND I THINK
24 THAT THERE ISN'T A LOT OF LAW THAT I'VE SEEN THAT DEALS WITH
25 THIS SPACE AND LOOKING AT KIND OF WHAT CAN BE TRADEDRESS IN

1 DEALING WITH THESE KIND OF BLOGS AND INSTAGRAM SITES AND THINGS
2 OF THAT NATURE, AND WHAT IS FUNCTIONALITY VERSUS WHAT IS
3 NON-FUNCTIONAL THAT GETS A MORE DEGREE OF PROTECTION. AND I'M
4 ALSO CONCERNED WITH WHAT THE DEFENDANT STATED, WHICH IS THIS
5 IDEA THAT IF I FIND THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF
6 SUCCESS ON THE MERITS, THAT THIS PROTECTED TRADEDRESS THAT THE
7 DEFENDANT HAS COPIED, THEN WHAT DOES IT DO TO THIS COPYCAT
8 ISSUE AND THE FACT THAT SOMEBODY CANNOT USE CONFIDENTIAL
9 INFORMATION AND THAT IT WOULD BE A REALLY BROAD FINDING HERE.
10 AND WHO WAS FIRST, WHO IS SECOND. IT'S CERTAINLY EASY TO
11 DETERMINE HERE, BUT NOT ACROSS THE INTERNET. I'M NOT SAYING
12 THAT THERE ISN'T POTENTIALLY A TRADEDRESS CLAIM. IT'S JUST
13 THAT IT'S NOT A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE
14 MERITS. AND THIS IS SOMETHING THAT'S GOING TO HAVE TO BE
15 BRIEFED IN MORE DETAIL AND KIND OF DEALT WITH. AND CERTAINLY
16 IT MAY BE THAT THE PLAINTIFF PREVAILS ON THIS, BUT I DON'T SEE
17 THAT IT'S CLEAR ENOUGH TO WARRANT AN INJUNCTION.

18 NOW, THE IRREPARABLE INJURY PROBLEM IS ALSO ONE THAT I
19 HAVE SOME STRONG CONCERNS ABOUT, AND I DON'T FIND THAT THE
20 PLAINTIFF HAS MET THE BURDEN ON THAT PIECE BECAUSE IT'S NOT
21 CLEAR THAT JUST BECAUSE THE DEFENDANT IS SUCCESSFUL, THAT THAT
22 HAS MEANT THAT THE PLAINTIFF IS LESS SUCCESSFUL. I DON'T KNOW
23 THAT WE CAN SAY THAT. IT'S ALSO UNCLEAR ULTIMATELY WHAT THE
24 DAMAGES ARE HERE FROM THESE INDIVIDUAL CLAIMS AND HOW THIS IS
25 GOING TO BE CALCULATED. SO IT'S NOT CLEAR TO ME THAT THE

1 PLAINTIFF HAS SHOWN THAT SHE IS LOSING CUSTOMERS BECAUSE OF
2 DEFENDANT'S USE OF CONFIDENTIAL INFORMATION VERSUS HER USE OF
3 JUST THIS KIND OF PUBLICLY AVAILABLE INFORMATION, AND THAT
4 PEOPLE HAVE STOPPED GOING TO THE PLAINTIFF'S SITE OR STOPPED
5 BUYING FROM THE PLAINTIFF BECAUSE THE DEFENDANT'S SITE IS USING
6 THIS CONFIDENTIAL INFORMATION OR THIS COPY TRADEDRESS
7 INAPPROPRIATELY -- OR TYING THIS BACK TO THAT. I JUST DON'T
8 THINK THAT THAT HAS BEEN DEMONSTRATED.

9 THE BALANCE OF THE HARMS IS TIED A LITTLE BIT TO THE OTHER
10 FACTORS. I THINK THAT YOU'VE GOT THE FACT THAT CERTAINLY THE
11 INJUNCTION THAT THE PLAINTIFF IS ASKING FOR WOULD CAUSE GREAT
12 HARM TO THE DEFENDANT. THERE ARE WAYS TO MAYBE HAVE A
13 DIFFERENT KIND OF LESSER INJUNCTION THAT MIGHT BE LESS HARMFUL,
14 BUT CERTAINLY I THINK THERE WOULD BE A LOT OF HARM TO THE
15 DEFENDANT. AND THE PLAINTIFF'S ARGUMENT ON THE BALANCE OF
16 HARMS IS THAT THIS IS NOT JUST ANOTHER COMPETITOR. THIS IS A
17 COMPETITOR THAT'S USING TRADE SECRETS, THE CONFIDENTIAL
18 INFORMATION, BUT THAT IS STILL A QUESTION.

19 THE HARM TO THE PUBLIC, THAT KIND OF GOES BOTH WAYS EXCEPT
20 AS IT RELATES TO, I THINK, THIS IDEA OF THESE MORE GENERIC
21 COPYCAT WEBSITES AND HOW THIS MIGHT IMPACT THEM. BUT OVERALL I
22 DO THINK THAT THE PLAINTIFF HASN'T MET THEIR BURDEN TO GET AN
23 INJUNCTION, SO I'M NOT GOING TO GRANT THE INJUNCTION. BUT LET
24 ME ALSO SPEAK TO SOME OTHER ISSUES. NOT GRANTING AN INJUNCTION
25 IS NOT AT ALL THE SAME THING AS SAYING THAT I THINK THAT THE

1 PLAINTIFFS HAVE A BAD CASE AND THAT THE CASE IS GOING TO BE
2 DISMISSED. THE OTHER THING THAT I WILL SAY IS THAT IF A JURY
3 LOOKS AT THIS, THEY'RE GOING TO SEE SOME, FOR LACK OF A BETTER
4 WORD, KIND OF SKETCHY BEHAVIOR AND MAYBE A BETRAYAL OF TRUST.
5 AND JURIES DON'T LIKE THAT. I DON'T KNOW WHICH OF THESE 14
6 CLAIMS IS GOING TO MAKE IT ALL THE WAY THROUGH, IF ANY. THAT'S
7 A QUESTION THAT'S LEFT FOR ANOTHER DAY, BUT A JURY'S NOT GOING
8 TO LIKE YOU SENDING THESE TEXTS TO THE PLAINTIFF THE WHOLE TIME
9 YOU WERE OPERATING A SECRET BUSINESS THAT LOOKS A WHOLE LOT
10 LIKE HERS. SO MAYBE THERE'S NOT TECHNICALLY TRADEDRESS
11 VIOLATIONS OR TECHNICALLY THEFT OF TRADE SECRETS. I DON'T KNOW
12 IF THERE IS OR ISN'T, BUT IF ONE OF THESE CLAIMS MAKES IT
13 THROUGH, THEY'RE NOT GOING TO LIKE THIS. THIS IS NOT A GOOD
14 LOOK FOR YOU. AND SO FINDING THAT THE PLAINTIFF HASN'T MET
15 THIS EXTRAORDINARY BURDEN IS NOT SAYING THAT THE COURT BELIEVES
16 THE PLAINTIFF DOES NOT HAVE A CASE. THAT'S A WHOLE DIFFERENT
17 CALCULATION FOR ANOTHER DAY. I THINK IT'S IMPORTANT THAT
18 YOU'RE BOTH HERE AND YOU'RE HEARING HOW THIS IS COMING OUT
19 BECAUSE I THINK PEOPLE GET VERY PERSONALLY INVOLVED IN CASES
20 AND IT CAUSES THEM SOMETIMES TO NOT LOOK AT THE TECHNICAL
21 BURDENS AND WHAT THE LAW REQUIRES TO PROVE AND HOW THIS IS
22 GOING TO BE PROVED AND HOW DAMAGES ARE GOING TO BE MEASURED.
23 AND EVEN THOUGH I'M NOT SHUTTING DOWN YOUR SITE, IT'S POSSIBLE
24 THAT YOU HAVE TO GIVE BACK ALL THE MONEY THAT YOU EARNED FROM
25 YOUR SITE. SO DEALING WITH THIS SOONER THAN LATER, IT'S GOING

1 TO BE, I THINK, VERY IMPORTANT FOR BOTH OF YOU. THE LEGAL FEES
2 THAT Y'ALL ARE PAYING TO DEAL WITH THIS ARE PROBABLY PRETTY
3 HIGH GIVEN THE NUMBER OF PEOPLE I SEE HERE. AND SO WHAT I'M
4 GOING TO DO IS I'M GOING TO ENTER AN ORDER DOING THIS. I AM
5 GOING TO ORDER YOU TO MEDIATION. I THINK Y'ALL NEED TO THINK
6 ABOUT WHAT A RESOLUTION OF THIS LOOKS LIKE. I DON'T THINK
7 ANYONE IS NECESSARILY GOING TO GET EVERYTHING THEY WANT IN TWO
8 YEARS DOWN THE ROAD, WHICH IS PROBABLY WHAT THIS IS GOING TO
9 TAKE, IN EXPERTS AND DEPOSING PEOPLE AT INSTAGRAM POTENTIALLY.
10 THIS IS GOING TO CREATE ITS OWN SET OF ISSUES. Y'ALL ARE GOING
11 TO HAVE THIS HANGING OVER YOU FOR A LONG PERIOD OF TIME. I CAN
12 GUARANTEE THAT BOTH OF YOU ARE VERY STRESSED OUT ABOUT THIS AND
13 THIS IS CAUSING A LOT OF DRAMA IN YOUR LIVES. AND SO YOU ARE
14 GOING TO BE MUCH BETTER OFF IF YOU CAN COME UP WITH A WAY TO
15 RESOLVE THIS AND THINK ABOUT WHAT THAT MIGHT LOOK LIKE. AND SO
16 YOU'RE NOT REQUIRED TO SETTLE THE CASE. THERE'S NO REQUIREMENT
17 EVER THAT SOMEONE SETTLE A CASE. I CAN'T MAKE YOU DO THAT, BUT
18 I THINK THAT THIS KIND OF SCORCHED-EARTH APPROACH IS NOT GOING
19 TO BE HELPFUL FOR ANYBODY LONG TERM. AND SO THERE ARE WAYS TO
20 CRAFT RESOLUTIONS. THERE ARE WAYS TO KIND OF MAYBE CHANGE IN
21 SOME WAY THE SITE. THERE COULD BE WAYS THAT OVER A PERIOD OF
22 TIME A CERTAIN COMMISSION IS PAID TO THE PLAINTIFF UNTIL IT'S
23 AGREED UPON. THERE ARE LOFTS WAYS TO RESOLVE THIS. AND IF YOU
24 GO ALL THE WAY TO A JURY, JURIES ARE VERY BLUNT-FORCED TOOLS.
25 AND SO MAYBE THEY DO AWARD A LOT OF THE DAMAGES TO PLAINTIFF,

1 BUT COULD THE DEFENDANT EVEN PAY THEM? YOU'RE LOOKING AT
2 SCENARIOS WHERE PEOPLE MAY NOT GET WHAT THEY WANT AND WILL HAVE
3 TO GO THROUGH THIS FOR A COUPLE OF YEARS AND PAY A LOT OF
4 ATTORNEY'S FEES. AND SO I THINK THAT EVERYONE KIND OF NEEDS TO
5 STEP BACK AND THINK ABOUT WHAT THEY WANT TO ACCOMPLISH. AND SO
6 I AM GOING TO ORDER THE CASE TO MEDIATION. IF IT DOESN'T
7 RESOLVE, THEN WE'LL PICK BACK UP IN DISCOVERY, AND I'LL RULE ON
8 THE MOTION TO DISMISS. I DO WANT THE MEDIATION TO HAPPEN
9 BEFORE THE MOTION TO DISMISS IS RULED ON, AND RELATIVELY SOON.
10 JUST MY GUT IS THAT PROBABLY SOME OF THESE CLAIMS ARE GOING
11 AWAY, BUT NOT ALL OF THEM. AND SO THERE ARE SOME THAT SEEM TO
12 BE KIND OF, LIKE, CLAIM NUMBER 13 OR 12 SEEMS TO BE MAYBE A
13 REACH, BUT THERE ARE CLAIMS IN THERE THAT LOOK LIKE THERE MIGHT
14 BE SERIOUS QUESTIONS OF FACT THAT WOULD TAKE IT TO THE NEXT
15 LEVEL. AND SO SOME OF THE PROBLEMS THAT CONCERN ME AT A T.R.O.
16 MAY NOT BE AS OF AS MUCH CONCERN FOR A MOTION TO DISMISS. SO
17 THAT'S WHAT I'M GOING TO DO. I'M NOT GOING TO ENTER A SEPARATE
18 ORDER ON THE T.R.O. THE TRANSCRIPT HAS ALL MY FINDINGS ON THAT
19 SO THAT YOU CAN HAVE ACCESS TO THAT. AND SO I DO APPRECIATE
20 YOU ANSWERING MY QUESTIONS. I HAVE A LOT OF QUESTIONS. I
21 THINK THAT IT'S IMPORTANT TO REMEMBER THAT I COME IN AFTER
22 READING EVERYTHING AND TRYING TO FIGURE OUT WHAT DECISION I'M
23 GOING TO MAKE AND WHAT ISSUES ARE THE HARDEST FOR YOU. AND SO
24 WHAT I WANT TO ASK YOU ABOUT ARE THE THINGS THAT I THINK ARE
25 GOING TO CAUSE YOU THE MOST PROBLEM SO THAT YOU CAN ADDRESS

1 THEM. SOME OF THE ISSUES I DIDN'T ASK YOU ABOUT AS MUCH ARE
2 BECAUSE I FELT THAT YOU HAD A GOOD ARGUMENT ON THAT OR I
3 UNDERSTOOD YOUR ARGUMENT ON THAT. SO EVEN THOUGH NOT EVERYONE
4 GOT TO ALL OF THEIR ARGUMENT, I DID SPEND A LOT OF TIME ON THE
5 BRIEFS AND ACTUALLY READ THEM MORE THAN ONCE. SO I'M VERY
6 FAMILIAR WITH KIND OF THIS WHOLE PACKET OF STUFF THAT WAS
7 SUBMITTED. SO, WITH THAT, WE ARE ADJOURNED. THANK YOU.

8 (PROCEEDINGS ADJOURNED.)
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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, MONTRELL VANN, RPR, RMR, RDR, CRR, OFFICIAL COURT REPORTER FOR THE UNITED STATES DISTRICT COURT, FOR THE NORTHERN DISTRICT OF GEORGIA, DO HEREBY CERTIFY THAT THE FOREGOING 50 PAGES CONSTITUTE A TRUE TRANSCRIPT OF PROCEEDINGS HAD BEFORE THE SAID COURT, HELD IN THE CITY OF ATLANTA, GEORGIA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS, THE 16TH DAY OF FEBRUARY 2023.

/S/ MONTRELL VANN
MONTRELL VANN, RPR, RMR, RDR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT